



MISSISSIPPI CODE 1972
Annotated

Corporations, Associations, and
Partnerships

Title 79

TABLE OF CONTENTS

VOLUME 18

TITLE 79

CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

CHAP.	BEGINNING SECTION
1. General Provisions Relative to Corporations.	79-1-1
3. Business Corporations [Repealed]	79-3-1
4. Mississippi Business Corporation Act	79-4-1.01
5. Business Development Corporations	79-5-1
6. Foreign Limited Liability Companies [Repealed]	79-6-1
7. Small Business Investment Companies	79-7-1
9. Professional Corporations [Repealed].	79-9-1
10. Mississippi Professional Corporation Act	79-10-1
11. Nonprofit, Nonshare Corporations and Religious Societies	79-11-1
12. Partnerships [Repealed]	79-12-1
13. Uniform Partnership Act (1997).	79-13-101
14. Mississippi Limited Partnership Act.	79-14-101
15. Investment Trusts.	79-15-1
16. Mississippi Registration of Foreign Business Trusts Act . . .	79-16-1
17. Agricultural Associations; Conversion to Corporate Form	79-17-1
19. Agricultural Cooperative Marketing Associations	79-19-1
21. Aquatic Products Marketing Associations	79-21-1
22. Mississippi Aquaculture Act of 1988	79-22-1
23. Commercial and Proprietary Information.	79-23-1
25. Mississippi Shareholder Protection Act	79-25-1
27. Mississippi Control Share Act	79-27-1
29. Mississippi Limited Liability Company Act.	79-29-101
31. Mississippi Registration of Foreign Limited Liability Partnerships Act [Repealed].	79-31-1
33. Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations.	79-33-1



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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME EIGHTEEN

**CORPORATIONS, ASSOCIATIONS,
AND PARTNERSHIPS**

§§ 79-1-1 to 79-33-11

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2009 REGULAR LEGISLATIVE SESSION
AND THE 1ST THROUGH 3RD EXTRAORDINARY LEGISLATIVE SESSIONS



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4456212

ISBN 978-1-4224-5914-0 (Volume 18)
ISBN 978-0-327-09628-3 (Code set)



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Matthew Bender & Company, Inc.

701 E. Water Street, Charlottesville, VA 22906-5389

www.lexisnexus.com

PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972. A copy of that act is set out in Volume 1, following the Publisher's Foreword.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

- Advance Code Service
- Advance Sheets
- Amendment Notes
- Analyses
- Attorney General Opinions
- Code Status
- Comparable Legislation from other States
- Court Rules
- Cross References
- Editor's Notes
- Effective Dates
- Federal Aspects
- Index
- Joint Legislative Committee Notes
- Judicial Decisions
- Organization and Numbering System
- Placement of Notes
- Replacement Volumes
- Research and Practice References
- Source Notes
- Statute Headings
- Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, P.O. Box 7587, Charlottesville, VA 22906-7587.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and

USER'S GUIDE

approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Attorney General Opinions." The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooper-

USER'S GUIDE

ation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor. Acts affecting voting rights and procedures take effect on the date the United States Attorney General interposes no objection under § 5 of the Voting Right Act of 1965.

USER'S GUIDE

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note

will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

USER'S GUIDE

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note. :

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or “catchlines” for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
- Allocation of Acts of Legislature, 1972 — present.
- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

PUBLISHER'S FOREWORD

This 2009 Replacement Volume 18 of the Mississippi Code of 1972 Annotated represents material appearing in both the original 1973 bound volume, the 1996 Replacement Volume 18 and the 2001 Replacement Volume 18, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2009 Regular Session and the 1st through 3rd Extraordinary Legislative Sessions.

This volume contains the full text of Title 79, of the Mississippi Code of 1972 Annotated, as amended through the 2009 Regular Legislative Session and the 1st through 3rd Extraordinary Legislative Sessions.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals with decision dates through February 10, 2009, and decisions of the appropriate federal courts with decision dates through December 23, 2008. These cases will be printed in the following reporters:

- Southern Reporter, 2nd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

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October 2009

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GENERAL OUTLINE OF TITLES AND CHAPTERS

CONSTITUTION OF THE UNITED STATES	Volume 1
CONSTITUTION OF MISSISSIPPI	Volume 1

TITLE 1. LAWS AND STATUTES

		Beginning Section
CHAPTER	1. Code of 1972	1-1-1
	3. Construction of Statutes	1-3-1
	5. Session Laws and Journals	1-5-1

TITLE 3. STATE SOVEREIGNTY, JURISDICTION AND HOLIDAYS

CHAPTER	1. State Sovereignty Commission [Repealed]	3-1-1
	3. State Boundaries, Holidays, and State Emblems	3-3-1
	5. Acquisition of Land by United States Government	3-5-1

TITLE 5. LEGISLATIVE DEPARTMENT

CHAPTER	1. Legislature	5-1-1
	3. Legislative Committees	5-3-1
	5. Interstate Cooperation	5-5-1
	7. Lobbying [Repealed]	5-7-1
	8. Lobbying Law Reform Act of 1994	5-8-1
	9. Agency Review	5-9-1
	11. Abolishment of Agencies	5-11-1

TITLE 7. EXECUTIVE DEPARTMENT

CHAPTER	1.	Governor	7-1-1
	3.	Secretary of State	7-3-1
	5.	Attorney General	7-5-1
	7.	State Fiscal Officer; Department of Audit	7-7-1
	9.	State Treasurer	7-9-1
	11.	Secretary of State; Land Records	7-11-1
	13.	Mississippi Administrative Reorganization Act	7-13-1
	15.	Executive Branch Reorganization Study Commission [Repealed]	7-15-1
17.	Mississippi Executive Reorganization Act of 1989	7-17-1	

TITLE 9. COURTS

CHAPTER	1. Provisions Common to Courts	9-1-1
---------	--------------------------------------	-------

GENERAL OUTLINE

TITLE 9. COURTS (Cont'd)

	Beginning Section
3. Supreme Court	9-3-1
4. Court of Appeals of the State of Mississippi	9-4-1
5. Chancery Courts	9-5-1
7. Circuit Courts	9-7-1
9. County Courts	9-9-1
11. Justice Courts	9-11-1
13. Court Reporters and Court Reporting	9-13-1
15. Judicial Council [Repealed]	9-15-1
17. Court Administrators	9-17-1
19. Commission on Judicial Performance	9-19-1
21. Administrative Office of Courts	9-21-1
23. Drug Courts	9-23-1

TITLE 11. CIVIL PRACTICE AND PROCEDURE

CHAPTER	1. Practice and Procedure Provisions Common to Courts	11-1-1
	3. Practice and Procedure in Supreme Court	11-3-1
	5. Practice and Procedure in Chancery Courts	11-5-1
	7. Practice and Procedure in Circuit Courts	11-7-1
	9. Practice and Procedure in County Courts and Justice Courts	11-9-1
	11. Venue of Actions	11-11-1
	13. Injunctions	11-13-1
	15. Arbitration and Award	11-15-1
	17. Suits to Confirm Title or Interest and to Remove Clouds on Title	11-17-1
	19. Ejectment	11-19-1
	21. Partition of Property	11-21-1
	23. Trial of Right of Property	11-23-1
	25. Unlawful Entry and Detainer	11-25-1
	27. Eminent Domain	11-27-1
	29. Sequestration	11-29-1
	31. Attachment in Chancery Against Nonresident, Absent or Absconding Debtors	11-31-1
	33. Attachment at Law Against Debtors	11-33-1
	35. Garnishment	11-35-1
	37. Replevin	11-37-1
	38. Claim and Delivery	11-38-1
	39. Quo Warranto	11-39-1
	41. Mandamus; Prohibition	11-41-1
	43. Habeas Corpus	11-43-1
	44. Compensation to Victims of Wrongful Conviction and Imprisonment	11-44-1

GENERAL OUTLINE

TITLE 11. CIVIL PRACTICE AND PROCEDURE (Cont'd)

	Beginning Section
45. Suits by and Against the State or Its Political Subdivisions	11-45-1
46. Immunity of State and Political Subdivisions From Liability and Suit for Torts and Torts of Employees	11-46-1
47. Lis Pendens	11-47-1
49. Rights and Duties of Attorneys, Generally	11-49-1
51. Appeals	11-51-1
53. Costs	11-53-1
55. Litigation Accountability Act of 1988	11-55-1
57. Structured Settlements	11-57-1

TITLE 13. EVIDENCE, PROCESS AND JURIES

CHAPTER	1. Evidence	13-1-1
	3. Process, Notice, and Publication	13-3-1
	5. Juries	13-5-1
	7. State Grand Jury Act	13-7-1

TITLE 15. LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER	1. Limitation of Actions	15-1-1
	3. Prevention of Frauds	15-3-1

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES

CHAPTER	1. Zoning, Planning and Subdivision Regulation ..	17-1-1
	2. Building Codes	17-2-1
	3. Promotion of Trade, Conventions and Tourism ..	17-3-1
	5. Jails, Waterworks and Other Improvements	17-5-1
	7. Removal of Local Governments in Emergencies ..	17-7-1
	9. Lease of Mineral Lands other than Sixteenth Section or "In Lieu" Lands	17-9-1
	11. Gulf Regional District Law	17-11-1
	13. Interlocal Cooperation of Governmental Units ..	17-13-1
	15. Human Resource Agencies	17-15-1
	17. Solid Wastes Disposal	17-17-1
	18. Mississippi Hazardous Waste Facility Siting Act of 1990	17-18-1
	19. Appropriations to Planning and Development Districts	17-19-1
	21. Finance and Taxation	17-21-1

GENERAL OUTLINE

TITLE 17. LOCAL GOVERNMENT; PROVISIONS COMMON TO COUNTIES AND MUNICIPALITIES (Cont'd)

	Beginning Section
23. Rural Fire Truck Acquisition Assistance Programs	17-23-1
25. General Provisions Relating to Counties and Municipalities	17-25-1
27. Municipal Historical Hamlet Act	17-27-1
29. Mississippi Entertainment District Act	17-29-1

TITLE 19. COUNTIES AND COUNTY OFFICERS

CHAPTER	1. County Boundaries	19-1-1
	2. County Government Reorganization Act	19-2-1
	3. Board of Supervisors	19-3-1
	4. County Administrator	19-4-1
	5. Health, Safety and Public Welfare	19-5-1
	7. Property and Facilities	19-7-1
	9. Finance and Taxation	19-9-1
	11. County Budget	19-11-1
	13. Contracts, Claims and Transaction of Business with Counties	19-13-1
	15. Records and Recording	19-15-1
	17. County Auditors	19-17-1
	19. Constables	19-19-1
	21. Coroners	19-21-1
	23. County Attorneys	19-23-1
	25. Sheriffs	19-25-1
	27. Surveyors and Surveys	19-27-1
	29. Local and Regional Railroad Authorities	19-29-1
	31. Public Improvement Districts	19-31-1

TITLE 21. MUNICIPALITIES

CHAPTER	1. Classification, Creation, Abolition, and Expansion	21-1-1
	3. Code Charters	21-3-1
	5. Commission Form of Government	21-5-1
	7. Council Form of Government	21-7-1
	8. Mayor-Council Form of Government	21-8-1
	9. Council-Manager Plan of Government	21-9-1
	11. Municipal Elections [Repealed]	21-11-1
	13. Ordinances	21-13-1
	15. Officers and Records	21-15-1
	17. General Powers	21-17-1
	19. Health, Safety, and Welfare	21-19-1

GENERAL OUTLINE

TITLE 21. MUNICIPALITIES (Cont'd)

	Beginning Section
21. Police and Police Departments	21-21-1
23. Municipal Courts	21-23-1
25. Fire Departments and Fire Districts	21-25-1
27. Public Utilities and Transportation	21-27-1
29. Employees' Retirement and Disability Systems	21-29-1
31. Civil Service	21-31-1
33. Taxation and Finance	21-33-1
35. Municipal Budget	21-35-1
37. Streets, Parks and Other Public Property	21-37-1
38. Acquisition or Lease of Real Property from Federal Government for Parks, Recreation, and Tourism	21-38-1
39. Contracts and Claims	21-39-1
41. Special Improvements	21-41-1
43. Business Improvement Districts	21-43-1
45. Tax Increment Financing	21-45-1
47. Delta Natural Gas District	21-47-1

TITLE 23. ELECTIONS

CHAPTER		
	1. Qualification of Candidates and Registration of Political Parties [Repealed]	23-1-1
	3. Corrupt Practices [Repealed]	23-3-1
	5. Registration and Elections [Repealed]	23-5-1
	7. Voting Machines and Electronic Voting System [Repealed]	23-7-1
	9. Absentee Ballot [Repealed]	23-9-1
	11. Presidential Election Law [Repealed]	23-11-1
	13. Mississippi Presidential Preference Primary and Delegate Selection Law [Repealed]	23-13-1
	15. Mississippi Election Code	23-15-1
	17. Amendments to Constitution by Voter Initiative	23-17-1

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

CHAPTER		
	1. Public Officers; General Provisions	25-1-1
	3. Salaries and Compensation	25-3-1
	4. Ethics in Government	25-4-1
	5. Removals From Office	25-5-1
	7. Fees	25-7-1
	9. Statewide Personnel System	25-9-1

GENERAL OUTLINE

TITLE 25. PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS (Cont'd)

	Beginning Section
11. Social Security and Public Employees' Retirement and Disability Benefits	25-11-1
13. Highway Safety Patrol Retirement System	25-13-1
14. Government Employees Deferred Compensation Plan Law	25-14-1
15. Group Insurance for Public Employees	25-15-1
17. Cafeteria Fringe Benefit Plans	25-17-1
19. Public Employer-Assisted Housing Program	25-19-1
31. District Attorneys	25-31-1
32. Public Defenders	25-32-1
33. Notaries Public	25-33-1
41. Open Meetings	25-41-1
43. Administrative Procedures	25-43-1.101
45. Permit and Licensing Procedures	25-45-1
51. State Depository for Public Documents	25-51-1
53. Mississippi Department of Information Technology Services (MDITS)	25-53-1
55. Lost Records	25-55-1
57. Destruction of Records [Repealed]	25-57-1
58. Geographic Information System	25-58-1
59. Archives and Records Management	25-59-1
60. Local Government Records	25-60-1
61. Public Access to Public Records	25-61-1
63. Digital Signature Act	25-63-1
65. Agency, University and Community/Junior College Internal Auditing Program	25-65-1

TITLE 27. TAXATION AND FINANCE

CHAPTER	1. Assessors and County Tax Collectors	27-1-1
	3. State Tax Commission [Effective until July 1, 2010]	27-3-1
	3. Department of Revenue [Effective July 1, 2010]	27-3-1
	4. Board of Tax Appeals	27-4-1
	5. Motor Vehicle Comptroller	27-5-1
	7. Income Tax and Withholding	27-7-1
	8. Mississippi S Corporation Income Tax Act	27-8-1
	9. Estate Tax	27-9-1
	10. Uniform Estate Tax Apportionment Act	27-10-1
	11. Amusement Tax [Repealed]	27-11-1
	13. Corporation Franchise Tax	27-13-1
	15. Statewide Privilege Taxes	27-15-1

GENERAL OUTLINE

TITLE 27. TAXATION AND FINANCE (Cont'd)

	Beginning Section
17. Local Privilege Taxes	27-17-1
19. Motor Vehicle Privilege and Excise Taxes	27-19-1
21. Finance Company Privilege Tax	27-21-1
23. Chain Store Privilege Tax [Repealed]	27-23-1
25. Severance Taxes	27-25-1
27. Vending and Amusement Machine Taxes	27-27-1
29. Ad Valorem Taxes—General Provisions	27-29-1
31. Ad Valorem Taxes—General Exemptions	27-31-1
33. Ad Valorem Taxes—Homestead Exemptions	27-33-1
35. Ad Valorem Taxes—Assessment	27-35-1
37. Ad Valorem Taxes—Payments in Lieu of Taxes	27-37-1
38. Ad Valorem Taxes—Telecommunications Tax Reform	27-38-1
39. Ad Valorem Taxes—State and Local Levies	27-39-1
41. Ad Valorem Taxes—Collection	27-41-1
43. Ad Valorem Taxes—Notice of Tax Sale to Owners and Lienors	27-43-1
45. Ad Valorem Taxes—Redemption of Land Sold for Taxes	27-45-1
47. Ad Valorem Taxes—Assignment of Tax Liens ..	27-47-1
49. Ad Valorem Taxes—Insolvencies	27-49-1
51. Ad Valorem Taxes—Motor Vehicles	27-51-1
53. Ad Valorem Taxes—Mobile Homes	27-53-1
55. Gasoline and Motor Fuel Taxes	27-55-1
57. Tax on Oils	27-57-1
59. Liquefied Compressed Gas Tax	27-59-1
61. Interstate Commercial Carriers Motor Fuel Tax	27-61-1
63. Motor Vehicle Fueling Centers [Repealed]	27-63-1
65. Sales Tax	27-65-1
67. Use or Compensating Taxes	27-67-1
68. Uniform Sales and Use Tax Administration Law	27-68-1
69. Tobacco Tax	27-69-1
70. Nonsettling Manufacturer Cigarette Fee	27-70-1
71. Alcoholic Beverage Taxes	27-71-1
73. Tax Refunds	27-73-1
75. Reciprocal Collection of Taxes	27-75-1
77. Appellate Review for Taxpayers Aggrieved by Certain Actions of the State Tax Commission	27-77-1
101. Annual Reports by Departments of Government and State-Supported Institutions	27-101-1
103. State Budget	27-103-1
104. State Fiscal Affairs	27-104-1
105. Depositories	27-105-1

GENERAL OUTLINE

TITLE 27. TAXATION AND FINANCE (Cont'd)

	Beginning Section
107. Disaster Relief	27-107-1
109. Cruise Vessels	27-109-1

TITLE 29. PUBLIC LANDS, BUILDINGS AND PROPERTY

CHAPTER	1. Public Lands	29-1-1
	3. Sixteenth Section and Lieu Lands	29-3-1
	5. Care of Capitol, Old Capitol, State Office Build- ings and Executive Mansion	29-5-1
	7. Mineral Leases of State Lands	29-7-1
	9. Inventories of State Property	29-9-1
	11. Energy Conservation in Public Buildings [Repealed]	29-11-1
	13. Flood Insurance for State-Owned Buildings	29-13-1
	15. Public Trust Tidelands	29-15-1
	17. State Agency Repair and Renovation	29-17-4

TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS

CHAPTER	1. General Provisions Relative to Public Contracts	31-1-1
	3. State Board of Public Contractors	31-3-1
	5. Public Works Contracts	31-5-1
	7. Public Purchases	31-7-1
	8. Acquisition of Public Buildings, Facilities, and Equipment Through Rental Contracts	31-8-1
	9. Surplus Property Procurement Commission	31-9-1
	11. State Construction Projects	31-11-1
	13. Validation of Public Bonds	31-13-1
	15. Refunding Bonds	31-15-1
	17. State Bonds; Retirement of Bonds	31-17-1
	18. Variable Rate Debt Instruments	31-18-1
	19. Public Debts	31-19-1
	21. Registered Bonds	31-21-1
	23. Mississippi Private Activity Bonds Allocation Act	31-23-1
	25. Mississippi Development Bank Act	31-25-1
	27. Mississippi Bond Refinancing Act	31-27-1
	29. Institute for Technology Development	31-29-1
	31. Mississippi Telecommunications Conference and Training Center	31-31-1

TITLE 33. MILITARY AFFAIRS

CHAPTER	1. Definitions and General Provisions Relating to the Military Forces	33-1-1
---------	--	--------

GENERAL OUTLINE

TITLE 33. MILITARY AFFAIRS (Cont'd)

	Beginning Section
3. Commander in Chief, Military Department, and Governor's Staff	33-3-1
4. Mississippi Military Family Relief Fund	33-4-1
5. The Militia and Mississippi State Guard	33-5-1
7. National Guard	33-7-1
9. Property and Finances	33-9-1
11. Training Facilities	33-11-1
13. Mississippi Code of Military Justice	33-13-1
15. Emergency Management and Civil Defense	33-15-1

TITLE 35. WAR VETERANS AND PENSIONS

CHAPTER	1. State Veterans Affairs Board	35-1-1
	3. War Veterans; Miscellaneous Provisions	35-3-1
	5. Guardianship of Veterans	35-5-1
	7. Veterans' Home Purchase Law	35-7-1
	9. Pensions [Repealed]	35-9-1

TITLE 37. EDUCATION

CHAPTER	1. State Board of Education	37-1-1
	3. State Department of Education	37-3-1
	4. State Board for Community and Junior Colleges	37-4-1
	5. County Boards of Education and Superintendents	37-5-1
	6. Mississippi Uniform School Law	37-6-1
	7. School Districts; Boards of Trustees of School Districts	37-7-1
	9. District Superintendents, Principals, Teachers, and Other Employees	37-9-1
	11. General Provisions Pertaining to Education	37-11-1
	13. Curriculum; School Year and Attendance	37-13-1
	14. Mary Kirkpatrick Haskell-Mary Sprayberry Public School Nurse Act of 2007	37-14-1
	15. Public Schools; Records, Enrollment and Transfer of Pupils	37-15-1
	16. Statewide Testing Program	37-16-1
	17. Accreditation of Schools	37-17-1
	18. Superior-Performing, Exemplary and School At-Risk Schools Programs	37-18-1
	19. Minimum Program of Education	37-19-1
	20. Remedial Education	37-20-1
	21. Early Childhood Education	37-21-1
	22. State Funds for School Districts	37-22-1

GENERAL OUTLINE

TITLE 37. EDUCATION (Cont'd)

	Beginning Section
23. Exceptional Children	37-23-1
25. Driver Education and Training	37-25-1
26. State Court Education Fund	37-26-1
27. Agricultural High Schools	37-27-1
28. Charter Schools	37-28-1
29. Junior Colleges	37-29-1
31. Vocational Education	37-31-1
33. Civilian Vocational Rehabilitation	37-33-1
35. Adult Education	37-35-1
37. Public Schools; Accounting and Auditing	37-37-1
39. Public Schools; Purchases	37-39-1
41. Transportation of Pupils	37-41-1
43. Textbooks	37-43-1
45. State Aid to Public Schools	37-45-1
47. State Aid for Construction of School Facilities	37-47-1
49. Loans to Students	37-49-1
51. Financial Assistance to Children Attending Non- sectarian Private Schools	37-51-1
53. Summer Normals	37-53-1
55. School Libraries	37-55-1
57. Taxation	37-57-1
59. School Bonds and Obligations	37-59-1
61. Expenditure of School Funds; Budgets	37-61-1
63. Educational Television	37-63-1
65. Closing of Public Schools and Institutions of Higher Learning	37-65-1
101. Institutions of Higher Learning; General Provisions	37-101-1
102. Off-campus Instructional Programs	37-102-1
103. Residency and Fees of Students Attending or Applying for Admission to Educational Institutions	37-103-1
104. Mississippi Educational Facilities Authority Act for Private, Nonprofit Institutions of Higher Learning	37-104-1
105. Campuses and Streets of State Institutions of Higher Learning	37-105-1
106. Post-Secondary Education Financial Assistance	37-106-1
107. Scholarships for Children of Deceased or Dis- abled Law Enforcement Officers or Firemen	37-107-1
108. Scholarships for Children of Prisoners of War or Men Missing in Action	37-108-1

GENERAL OUTLINE

TITLE 37. EDUCATION (Cont'd)

	Beginning Section
109. Medical Education Loans and Scholarships. [Repealed]	37-109-1
110. Mississippi Public Management Graduate In- tern Program	37-110-1
111. Fraternities, Sororities and Other Societies	37-111-1
113. Mississippi State University of Agriculture and Applied Science	37-113-1
115. University of Mississippi	37-115-1
117. Mississippi University for Women	37-117-1
119. University of Southern Mississippi	37-119-1
121. Alcorn State University	37-121-1
123. Delta State University	37-123-1
125. Jackson State University	37-125-1
127. Mississippi Valley State University	37-127-1
129. Nursing Schools and Scholarships	37-129-1
131. Teachers Demonstration and Practice Schools	37-131-1
132. Student Teachers	37-132-1
133. Technical Institutes	37-133-1
135. Compacts with Other States	37-135-1
137. School Asbestos Hazard Elimination Act [Repealed]	37-137-1
138. Asbestos Abatement Accreditation and Certifica- tion Act	37-138-1
139. Mississippi School for Mathematics and Science	37-139-1
140. Mississippi School of the Arts	37-140-1
141. The University Research Center Act of 1988 ...	37-141-1
143. Omnibus Loan or Scholarship Act of 1991	37-143-1
144. Mississippi Rural Physicians Scholarship Program	37-144-1
145. Mississippi Opportunity Loan Program Act	37-145-1
147. Mississippi University Research Authority Act	37-147-1
149. Mississippi Teacher Center	37-149-1
151. Mississippi Accountability and Adequate Educa- tion Program Act of 1997	37-151-1
152. Commission on Restructuring the Mississippi Adequate Education Program (MAEP)	37-152-1
153. Workforce Training and Education Consolidation Act	37-153-1
155. College Savings Plans of Mississippi	37-155-1
157. Student Tuition Assistance	37-157-1
159. Mississippi Critical Teacher Shortage Act	37-159-1
160. Teach for America Act	37-160-1
161. Mississippi Education Reform Act of 2006	37-161-1

GENERAL OUTLINE

TITLE 39. LIBRARIES, ARTS, ARCHIVES AND HISTORY

	Beginning Section
CHAPTER	
1. State Law Library; Legislative Reference Bureau	39-1-1
3. Libraries and Library Commission	39-3-1
5. Archives and History	39-5-1
7. Antiquities	39-7-1
9. Trusts to Promote Arts and Sciences	39-9-1
11. Mississippi Arts Commission	39-11-1
13. Historic Preservation Districts and Landmarks	39-13-1
15. Municipal and County Funds to Support the Arts	39-15-1
17. Mississippi Sports Hall of Fame and Dizzy Dean Museum	39-17-1
19. Museum Unclaimed Property Act	39-19-1
21. Mississippi Craft Center	39-21-1
23. Mississippi Children's Museum	39-23-1
25. Southern Arts and Entertainment Center	39-25-1
27. Mississippi Blues Commission	39-27-1
29. Mississippi Commission on the Holocaust	39-29-1
31. Mississippi Bicentennial Celebration Commission	39-31-1
33. Mississippi Country Music Trail	39-33-1
35. Mississippi Sesquicentennial of the American Civil War Commission	39-35-1

TITLE 41. PUBLIC HEALTH

CHAPTER	
1. Mississippi Department of Public Health [Repealed]	41-1-1
3. State Board of Health; Local Health Boards and Officers	41-3-1
4. Department of Mental Health	41-4-1
5. Governing Authorities for State Hospitals and Institutions	41-5-1
7. Hospital and Health Care Commissions	41-7-1
9. Regulation of Hospitals; Hospital Records	41-9-1
10. Medical Records	41-10-1
11. State Charity Hospitals; Mississippi Children's Rehabilitation Center	41-11-1
13. Community Hospitals	41-13-1
15. Department for the Prevention of Insanity [Repealed]	41-15-1
17. State Mental Institutions	41-17-1
19. Facilities and Services for Individuals with Men- tal Retardation or Mental Illness	41-19-1

GENERAL OUTLINE

TITLE 41. PUBLIC HEALTH (Cont'd)

	Beginning Section
21. Individuals with Mental Illness or Mental Retardation	41-21-1
22. Hemophilia	41-22-1
23. Contagious and Infectious Diseases; Quarantine	41-23-1
24. Sickle Cell Testing Program	41-24-1
25. Disinfection and Sanitation of Buildings and Premises	41-25-1
26. Mississippi Safe Drinking Water Act of 1997 ...	41-26-1
27. Mosquito Control	41-27-1
28. Diabetes	41-28-1
29. Poisons, Drugs and Other Controlled Substances	41-29-1
30. Alcoholism and Alcohol Abuse Prevention, Control and Treatment	41-30-1
31. Commitment of Alcoholics and Drug Addicts for Treatment	41-31-1
32. Commitment of Alcoholics and Drug Addicts to Private Treatment Facilities	41-32-1
33. Tuberculosis and Respiratory Diseases; Tuberculosis Sanatorium	41-33-1
34. Health Care Practice Requirements Pertaining to Transmission of Hepatitis B and HIV	41-34-1
35. Eye Inflammation of Young	41-35-1
36. Determination of Death	41-36-1
37. Autopsies	41-37-1
39. Disposition of Human Bodies or Parts	41-39-1
41. Surgical or Medical Procedures; Consents	41-41-1
42. Family Planning	41-42-1
43. Cemeteries and Burial Grounds	41-43-1
45. Sexual Sterilization [Repealed]	41-45-1
47. Transportation and Possession of Parakeets and Other Birds [Repealed]	41-47-1
49. Regulation of Hotels and Innkeepers	41-49-1
51. Animal and Poultry By-Products Disposal or Rendering Plants	41-51-1
53. Rabies Control in Dogs and Cats	41-53-1
55. Public Ambulance Service	41-55-1
57. Vital Statistics	41-57-1
58. Medical Radiation Technology	41-58-1
59. Emergency Medical Services	41-59-1
60. Emergency Medical Technicians — Paramedics — Use of Automated External Defibrillator ..	41-60-1
61. State Medical Examiner	41-61-1

GENERAL OUTLINE

TITLE 41. PUBLIC HEALTH (Cont'd)

	Beginning Section
63. Evaluation and Review of Professional Health Services Providers	41-63-1
65. [Reserved]	
67. Mississippi Individual On-Site Wastewater Disposal System Law	41-67-1
69. [Reserved]	
71. Home Health Agencies	41-71-1
73. Hospital Equipment and Facilities Authority Act	41-73-1
75. Ambulatory Surgical Facilities	41-75-1
77. Licensing of Birthing Centers	41-77-1
79. Health Problems of School Children	41-79-1
81. Perinatal Health Care	41-81-1
83. Utilization Review of Availability of Hospital Resources and Medical Services	41-83-1
85. Mississippi Hospice Law of 1995	41-85-1
86. Mississippi Children's Health Care Act	41-86-1
87. Early Intervention Act for Infants and Toddlers	41-87-1
88. Mississippi Child Immunization Act of 1994	41-88-1
89. Infant Mortality Task Force	41-89-1
90. Hearing Impairment of Infants and Toddlers ...	41-90-1
91. Central Cancer Registry	41-91-1
93. Osteoporosis Prevention and Treatment Education Act	41-93-1
95. Mississippi Health Policy Act of 1994	41-95-1
97. State Employee Wellness and Physical Fitness Programs	41-97-1
99. Qualified Health Center Grant Program	41-99-1
101. Mississippi Council on Obesity Prevention and Management	41-101-1
103. Task Force on Heart Disease and Stroke Prevention	41-103-1
105. Healthcare Coordinating Council	41-105-1
107. Health Care Rights of Conscience	41-107-1
109. Leonard Morris Chronic Kidney Disease Leadership Task Force	41-109-1
111. Child Death Review Panel	41-111-1
113. Tobacco Education, Prevention and Cessation Program	41-113-1
115. Tanning Facilities	41-115-1

TITLE 43. PUBLIC WELFARE

CHAPTER	1. Department of Human Services and County Departments of Public Welfare	43-1-1
---------	--	--------

GENERAL OUTLINE

TITLE 43. PUBLIC WELFARE (Cont'd)

	Beginning Section
3. Blind Persons	43-3-1
5. Schools for the Blind and Deaf	43-5-1
6. Rights and Liabilities of Blind and Other Hand- icapped Persons	43-6-1
7. Council on Aging	43-7-1
9. Old Age Assistance	43-9-1
11. Institutions for the Aged or Infirm	43-11-1
13. Medical Assistance for the Aged; Medicaid	43-13-1
14. Interagency Coordinating Counsel for Children and Youth	43-14-1
15. Child Welfare	43-15-1
16. Child Residential Home Notification Act	43-16-1
17. Temporary Assistance to Needy Families	43-17-1
18. Interstate Compact on the Placement of Children	43-18-1
19. Support of Natural Children	43-19-1
20. Child Care Facilities	43-20-1
21. Youth Court	43-21-1
23. Family Courts	43-23-1
24. State Central Registry of Child Abuse Reports; Wide Area Telephone Service for Reporting Child Abuse [Repealed]	43-24-1
25. Interstate Compacts Relating to Juveniles	43-25-1
27. Department of Youth Services	43-27-1
29. Disabled Persons	43-29-1
30. Mississippi Disability Resource Commission	43-30-1
31. Poor Persons	43-31-1
33. Housing and Housing Authorities	43-33-1
35. Urban Renewal and Redevelopment	43-35-1
37. Acquisition of Real Property Using Public Funds	43-37-1
39. Relocation Assistance	43-39-1
41. Emergency and Disaster Assistance	43-41-1
43. Administration of Social Security Funds	43-43-1
45. Adult Protective Services [Repealed]	43-45-1
47. Mississippi Vulnerable Adults Act	43-47-1
49. Mississippi Welfare Restructuring Program Act of 1993 [Repealed]	43-49-1
51. Family Preservation Act of 1994	43-51-1
53. Mississippi Leadership Council on Aging	43-53-1
55. Mississippi Commission for National and Com- munity Service	43-55-1
57. Comprehensive Plan for Provision of Services to Disabled Persons [Repealed]	43-57-1

GENERAL OUTLINE

TITLE 43. PUBLIC WELFARE (Cont'd)

	Beginning Section
59. Mississippi Commission on the Status of Women	43-59-1
61. Mississippi Seniors and Indigents Rx Program	43-61-1

TITLE 45. PUBLIC SAFETY AND GOOD ORDER

CHAPTER		
	1. Department of Public Safety	45-1-1
	2. Law Enforcement Officers and Fire Fighters Death and Disability Benefits Trust Funds ...	45-2-1
	3. Highway Safety Patrol	45-3-1
	4. County Jail Officers Training Program	45-4-1
	5. Law Enforcement Officers Training Academy ...	45-5-1
	6. Law Enforcement Officers Training Program ...	45-6-1
	7. County Patrol Officers	45-7-1
	9. Weapons	45-9-1
	11. Fire Protection Regulations, Fire Protection and Safety in Buildings	45-11-1
	12. Mississippi Fire Safety Standard and Firefighter Protection Act	45-12-1
	13. Fireworks and Explosives	45-13-1
	14. Radiation Protection Program	45-14-1
	15. High Voltage Power Lines	45-15-1
	17. Civil Emergencies	45-17-1
	18. Emergency Management Assistance Compact ..	45-18-1
	19. Subversive Groups and Subversive Activities ...	45-19-51
	21. Rock Festivals	45-21-1
	23. Boiler and Pressure Vessel Safety	45-23-1
	25. Identification Cards for Non-Drivers. [Repealed]	45-25-1
	27. Mississippi Justice Information Center	45-27-1
	29. Records	45-29-1
	31. Sex Offense Criminal History Record Informa- tion Act	45-31-1
	33. Registration of Sex Offenders	45-33-1
	35. Identification Cards	45-35-1
	37. Prevention of Youth Access to Tobacco Act	45-37-1
	39. Statewide Crime Stoppers Advisory Council	45-39-1

TITLE 47. PRISONS AND PRISONERS; PROBATION AND PAROLE

CHAPTER		
	1. County and Municipal Prisons and Prisoners ..	47-1-1
	3. Removal of Prisoners	47-3-1
	4. Privately Operated Correctional Facilities	47-4-1
	5. Correctional System	47-5-1
	7. Probation and Parole	47-7-1

GENERAL OUTLINE

TITLE 49. CONSERVATION AND ECOLOGY

		Beginning Section
CHAPTER	1. General Provisions	49-1-1
	2. Department of Environmental Quality	49-2-1
	3. Fisheries and Wildlife Research	49-3-1
	4. Mississippi Department of Wildlife, Fisheries and Parks	49-4-1
	5. Fish, Game and Bird Protection and Refuges ...	49-5-1
	6. Motor Vehicle and Boat Replacement Program	49-6-1
	7. Hunting and Fishing	49-7-1
	8. Importation, Sale and Possession of Inherently Dangerous Wild Animals	49-8-1
	9. Mussels	49-9-1
	10. Wildlife Violator Compact	49-10-1
	11. Private Shooting Preserves	49-11-1
	13. Commercial Quail	49-13-1
	15. Seafood	49-15-1
	17. Pollution of Waters, Streams, and Air	49-17-1
	18. Mississippi Liability of Persons Responding to Oil Spills Act	49-18-1
	19. Forests and Forest Protection	49-19-1
	20. Mississippi River Timberlands Control Act [Repealed]	49-20-1
	21. Interstate Environmental Compact	49-21-1
	23. Outdoor Advertising	49-23-1
	25. Junkyards	49-25-1
	26. Channel Maintenance Act	49-26-1
	27. Coastal Wetlands Protection Act	49-27-1
	28. Shoreline and Beach Preservation Districts	49-28-1
	29. Environmental Protection Council [Repealed] ..	49-29-1
	31. Mississippi Multimedia Pollution Prevention Act	49-31-1
	33. Mississippi Agricultural and Forestry Activity Act	49-33-1
	35. Mississippi Brownfields Voluntary Cleanup and Redevelopment; Remediation of Property on National Priorities List	49-35-1
	37. Statewide Scientific Information Management	49-37-1

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL

CHAPTER	1. Navigable Waters	51-1-1
	2. Mississippi Marine Litter Act	51-2-1
	3. Water Resources; Regulation and Control	51-3-1
	4. Mississippi Scenic Streams Stewardship Act ...	51-4-1

GENERAL OUTLINE

TITLE 51. WATERS, WATER RESOURCES, WATER DISTRICTS, DRAINAGE, AND FLOOD CONTROL (Cont'd)

	Beginning Section
5. Subsurface Waters; Well Drillers	51-5-1
7. Water Management Districts	51-7-1
8. Joint Water Management Districts	51-8-1
9. Development of Region Bordering Pearl River; Pearl River Valley Water Supply District; Met- ropolitan Area Water Supply Act	51-9-1
11. Pearl River Basin Development District	51-11-1
13. Tombigbee Valley Authority and Water Manage- ment District	51-13-1
15. Pat Harrison Waterway Commission and District	51-15-1
17. Big Black River Basin District	51-17-1
19. West Central Mississippi Waterway Commission [Repealed]	51-19-1
21. Lower Mississippi River Basin Development Dis- trict [Repealed]	51-21-1
23. Lower Yazoo River Basin District. [Repealed] ..	51-23-1
25. Yellow Creek Watershed Authority	51-25-1
27. Tennessee-Tombigbee Waterway Compact	51-27-1
29. Drainage Districts with Local Commissioners	51-29-1
31. Drainage Districts with County Commissioners	51-31-1
33. Provisions Common to Drainage Districts and Swamp Land Districts	51-33-1
35. Flood Control	51-35-1
37. Watershed Districts	51-37-1
39. Storm Water Management Districts	51-39-1
41. Public Water Authorities	51-41-1

TITLE 53. OIL, GAS, AND OTHER MINERALS

CHAPTER	1. State Oil and Gas Board	53-1-1
	3. Development, Production and Distribution of Gas and Oil	53-3-1
	5. Geological and Mineral Survey	53-5-1
	7. Surface Mining and Reclamation of Land	53-7-1
	9. Surface Coal Mining and Reclamation of Land	53-9-1

TITLE 55. PARKS AND RECREATION

CHAPTER	1. Mississippi Recreational Advisory Council [Repealed]	55-1-1
	3. State Parks and Forests	55-3-1
	5. Federal Parks and National Parkways	55-5-1

GENERAL OUTLINE

TITLE 55. PARKS AND RECREATION (Cont'd)

	Beginning Section
7. Bridge and Park Commissions	55-7-1
9. County and Municipal Facilities	55-9-1
11. Harrison County Parkway	55-11-1
13. Natchez Trace Parkway	55-13-1
15. Commemorative Parks and Monuments	55-15-1
17. International Gardens of Mississippi	55-17-1
19. Bienville Recreational District	55-19-1
21. Mississippi Zoological Park and Garden Districts	55-21-1
23. Mississippi Veterans Memorial Stadium	55-23-1
24. Mississippi Coast Coliseum Commission	55-24-1
25. Rails-to-Trails Recreational District	55-25-1

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT

CHAPTER	1. Mississippi Development Authority	57-1-1
	3. Agriculture and Industry Program	57-3-1
	4. Industrial Development Fund	57-4-1
	5. Industrial Parks and Districts	57-5-1
	7. Sale or Development of Airport Lands, or Other Lands, for Industrial Purposes	57-7-1
	9. Industrial Plant Training	57-9-1
	10. Small Business Assistance	57-10-1
	11. Market and Industrial Studies and Research ...	57-11-1
	13. Research and Development Center	57-13-1
	15. Marine Resources	57-15-1
	17. Forest Products Utilization Laboratory [Repealed]	57-17-1
	18. Renewable Natural Resources Research Act of 1994	57-18-1
	19. Food Technology Laboratory	57-19-1
	21. State Chemical Laboratory	57-21-1
	23. Pharmaceutical Product Development and Utilization	57-23-1
	25. Southern States Energy Compact	57-25-1
	26. Tourism Project Incentive Program; Theme Parks, Entertainment Centers, Scenic Attrac- tions, etc.	57-26-1
	27. Regional Tourist Promotion Councils	57-27-1
	28. Tourism Project Incentive Program; Entertain- ment Districts, etc.	57-28-1
	29. Travel and Tourism	57-29-1
	30. Family-Oriented Enterprises	57-30-1
	31. County Industrial Development Authorities	57-31-1

GENERAL OUTLINE

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

	Beginning Section
32. Southeast Mississippi Industrial Council	57-32-1
33. Southern Growth Policies Agreement	57-33-1
34. Alabama-Mississippi Joint Economic Develop- ment Authority	57-34-1
35. Tennessee River Valley Association	57-35-1
36. Chickasaw Trail Economic Development Com- pact [Repealed]	57-36-1
37. Transportation Planning Council [Repealed]	57-37-1
39. Energy and Transportation Planning	57-39-1
40. Energy Infrastructure Revolving Loan Program	57-40-1
41. Financing Industrial Enterprise Projects	57-41-1
43. Railroad Revitalization	57-43-1
44. Local Governments Freight Rail Service Projects	57-44-1
45. Mississippi-Louisiana-Alabama Rapid Rail Transit Compact	57-45-1
47. Southeast Interstate Low-Level Radioactive Waste Management Compact	57-47-1
49. Nuclear Waste Storage and Disposal	57-49-1
51. Enterprise Zones [Repealed]	57-51-1
53. Corporate Headquarters Incentive Program [Repealed]	57-53-1
54. Advanced Technology Initiative [Repealed]	57-54-1
55. Universities Research Institutes	57-55-1
56. Mississippi Technology Transfer Office	57-56-1
57. Export Trade Development	57-57-1
59. Mississippi Capital Companies [Repealed]	57-59-1
61. Mississippi Business Investment Act	57-61-1
62. Mississippi Advantage Jobs Act	57-62-1
63. Statewide Economic Development and Planning Act	57-63-1
64. Regional Economic Development	57-64-1
65. Mississippi International Trade Institute	57-65-1
67. Mississippi Superconducting Super Collider Act	57-67-1
69. Mississippi Minority Business Enterprise Act ..	57-69-1
71. Mississippi Small Enterprise Development Fi- nance Act	57-71-1
73. Economic Development Reform Act	57-73-1
75. Mississippi Major Economic Impact Act	57-75-1
77. Venture Capital Act of 1994	57-77-1
79. Mississippi Small Town Development Act	57-79-1
80. Growth and Prosperity Act	57-80-1
81. Mississippi Science and Technology Commission [Repealed]	57-81-1

GENERAL OUTLINE

TITLE 57. PLANNING, RESEARCH AND DEVELOPMENT (Cont'd)

	Beginning Section
83. Mississippi Technology, Inc. Liaison Committee	57-83-1
85. Mississippi Rural Impact Act	57-85-1
87. Mississippi Broadband Technology Development Act	57-87-1
89. Mississippi Motion Picture Incentive Act	57-89-1
91. Economic Redevelopment Act	57-91-1
93. Mississippi Existing Industry Productivity Loan Program	57-93-1
95. Mississippi Job Protection Act	57-95-1
97. Mississippi Delta Revitalization Act of 2006	57-97-1
99. Mississippi Major Economic Impact Withholding Rebate Incentive Program	57-99-1
100. Existing Industry Withholding Rebate Incentive Program	57-100-1
101. Mississippi Major Economic Impact Authority Component Construction Material Costs Re- bate Program	57-101-1
103. Technology Based Business Capital Assistance Programs	57-103-1
105. Qualified Equity Investment Tax Credits	57-105-1
107. Mississippi Workforce Training Projects	57-107-1

TITLE 59. PORTS, HARBORS, LANDINGS AND WATERCRAFT

CHAPTER	1. Harbor or Port Commissions; Powers of Political Subdivision; Pilotage	59-1-1
	3. Ports of Entry	59-3-1
	5. State Ports and Harbors	59-5-1
	6. Compact for Development of Deep Draft Harbor and Terminal	59-6-1
	7. County and Municipal Harbors	59-7-1
	9. County Port Authority or Development Commission	59-9-1
	11. County Port and Harbor Commission	59-11-1
	13. Harbor Improvements by Coast Counties	59-13-1
	15. Small Craft Harbors	59-15-1
	17. State Inland Ports	59-17-1
	19. Landings	59-19-1
	21. Boats and Other Vessels	59-21-1
	23. Alcohol Boating Safety Act	59-23-1
	25. Certificates of Title for Boats and Other Vessels	59-25-1

TITLE 61. AVIATION

CHAPTER	1. Transportation Commission	61-1-1
---------	------------------------------------	--------

GENERAL OUTLINE

TITLE 61. AVIATION (Cont'd)

	Beginning Section
3. Airport Authorities	61-3-1
4. Mississippi Wayport Authority Act	61-4-1
5. Acquisition, Disposition and Support of Airport Facilities	61-5-1
7. Airport Zoning	61-7-1
9. Incorporation of Airport Into Corporate Bound- aries of Municipality	61-9-1
11. Operation of Aircraft; Certification and Licens- ing of Pilots and Aircraft	61-11-1
13. Aircraft for Use of Governor, State Departments and Agencies	61-13-1
15. Registration of Aircraft	61-15-1
17. Concealing or Misrepresenting Aircraft Identifi- cation Number; Non-Conforming Aircraft Fuel Containers	61-17-1

TITLE 63. MOTOR VEHICLES AND TRAFFIC REGULATIONS

CHAPTER	1. Driver's License	63-1-1
	2. Mandatory Use of Safety Seat Belts	63-2-1
	3. Traffic Regulations and Rules of the Road	63-3-1
	5. Size, Weight and Load	63-5-1
	7. Equipment and Identification	63-7-1
	9. Traffic Violations Procedure	63-9-1
	10. Nonresident Traffic Violator Compact	63-10-1
	11. Implied Consent Law	63-11-1
	13. Inspection of Motor Vehicles	63-13-1
	15. Motor Vehicle Safety — Responsibility	63-15-1
	17. Manufacture, Sales and Distribution	63-17-1
	19. Motor Vehicle Sales Finance Law	63-19-1
	21. Motor Vehicle Titles	63-21-1
	23. Abandoned Motor Vehicles	63-23-1
	25. Motor Vehicle Chop Shop, Stolen and Altered Property Act	63-25-1
	27. Disclosure of Use of Nonoriginal Replacement Parts	63-27-1
	29. Mississippi Vehicle Protection Product Act	63-29-1

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES

CHAPTER	1. Transportation Department	65-1-1
	2. State Transportation Arbitration Board	65-2-1
	3. State Highway System	65-3-1
	4. Economic Development Highway Act	65-4-1

GENERAL OUTLINE

TITLE 65. HIGHWAYS, BRIDGES AND FERRIES (Cont'd)

	Beginning Section
5. Controlled Access Facilities	65-5-1
7. Public Roads and Streets; Private Way	65-7-1
9. State Aid Roads in Counties	65-9-1
10. County Major Feeder Road System [Repealed]	65-10-1
11. County Highway Aid	65-11-1
13. Highway and Street Revenue Bond Authority	65-13-1
15. County Funds for Roads and Bridges	65-15-1
17. County Road Officials	65-17-1
18. Local System Road Program	65-18-1
19. Separate Road Districts	65-19-1
21. Bridges; General Provisions	65-21-1
23. Bridges; Boundary and Other Waters	65-23-1
25. Mississippi River Bridges	65-25-1
26. Tennessee-Tombigbee Waterway Bridges	65-26-1
27. Ferries; General Provisions	65-27-1
29. Ferries in Certain Counties	65-29-1
31. Hospitality Stations on Highways	65-31-1
33. Sea Walls	65-33-1
37. Local System Bridge Replacement and Rehabil- itation Program	65-37-1
39. Gaming Counties Bond Sinking Fund	65-39-1
41. Mississippi Scenic Byways	65-41-1
43. Toll Roads and Toll Bridges	65-43-1

TITLE 67. ALCOHOLIC BEVERAGES

CHAPTER	1. Local Option Alcoholic Beverage Control	67-1-1
	3. Sale of Light Wine, Beer, and Other Alcoholic Beverages	67-3-1
	5. Native Wines	67-5-1
	7. Beer Industry Fair Dealing Act	67-7-1
	9. Possession or Transportation of Alcoholic Bever- ages, Light Wine, or Beer	67-9-1

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS

CHAPTER	1. Agriculture and Commerce Department; Council on Agriculture	69-1-1
	2. Mississippi Farm Reform Act	69-2-1
	3. Agricultural Seeds	69-3-1
	5. Fairs; Stock Shows; Improvement of Livestock	69-5-1
	7. Markets and Marketing; Domestic Fish Farming	69-7-1
	8. Beef Promotion And Research Program	

GENERAL OUTLINE

TITLE 69. AGRICULTURE, HORTICULTURE, AND ANIMALS (Cont'd)

	Beginning Section
9. Soybean Promotion Board	69-9-1
10. Rice Promotion Board	69-10-1
11. Swine	69-11-1
13. Stock Laws, Estrays	69-13-1
15. Board of Animal Health; Livestock and Animal Diseases	69-15-1
17. Livestock Biologics, Drugs and Vaccines	69-17-1
19. Regulation of Professional Services	69-19-1
21. Crop Spraying and Licensing of Aerial Applicators	69-21-1
23. Mississippi Pesticide Law	69-23-1
24. Fertilizing Materials and Additives	69-24-1
25. Plants, Plant and Bee Diseases	69-25-1
26. Pest Control Compact	69-26-1
27. Soil Conservation	69-27-1
28. Protection and Conservation of Agricultural Lands	69-28-1
29. Livestock Brands, Theft or Loss of Livestock and Protective Associations	69-29-1
31. Regulation of Moisture-Measuring Devices	69-31-1
33. Pecan Harvesting	69-33-1
34. Milk Producers Transportation Cost Assistance Loan Program	69-34-1
35. Mississippi Dairy Promotion Act	69-35-1
36. Southern Dairy Compact	69-36-1
37. Mississippi Boll Weevil Management Act	69-37-1
39. Agricultural Liming Materials	69-39-1
41. Mississippi Agribusiness Council Act of 1993 ...	69-41-1
42. Program to Encourage Growth in Mississippi Agribusiness Industry	69-42-1
43. Mississippi Ratite Council and Promotion Board	69-43-1
44. Mississippi Corn Promotion Board	69-44-1
45. Mississippi Agricultural Promotions Program Act	69-45-1
46. Mississippi Land, Water and Timber Resources Act	69-46-1
47. Organic Certification Program	69-47-1
48. Peanut Promotion Board	69-48-1
49. Field Crop Products	69-49-1
51. Ethanol, Anhydrous Alcohol and Wet Alcohol ...	69-51-1

GENERAL OUTLINE

TITLE 71. LABOR AND INDUSTRY

		Beginning Section
CHAPTER	1. Employer and Employee	71-1-1
	3. Workers' Compensation	71-3-1
	5. Unemployment Compensation	71-5-1
	7. Drug and Alcohol Testing of Employees	71-7-1
	9. Medical Savings Account Act	71-9-1
	11. Employment Protection Act	71-11-1

TITLE 73. PROFESSIONS AND VOCATIONS

CHAPTER	1. Architects	73-1-1
	2. Landscape Architectural Practice	73-2-1
	3. Attorneys at Law	73-3-1
	4. Auctioneers	73-4-1
	5. Barbers	73-5-1
	6. Chiropractors	73-6-1
	7. Cosmetologists	73-7-1
	9. Dentists	73-9-1
	10. Dietitians	73-10-1
	11. Practice of Funeral Service and Funeral Directing	73-11-1
	13. Engineers and Land Surveyors	73-13-1
	14. Hearing Aid Dealers	73-14-1
	15. Nurses	73-15-1
	17. Nursing Home Administrators	73-17-1
	19. Optometry and Optometrists	73-19-1
	21. Pharmacists	73-21-1
	22. Orthotics and Prosthetics	73-22-1
	23. Physical Therapists	73-23-1
	24. Mississippi Occupational Therapy Practice Act	73-24-1
	25. Physicians	73-25-1
	26. Physician Assistants	73-26-1
	27. Podiatrists	73-27-1
	29. Polygraph Examiners	73-29-1
	30. Licensed Professional Counselors	73-30-1
	31. Psychologists	73-31-1
	33. Public Accountants	73-33-1
	34. Real Estate Appraisers	73-34-1
	35. Real Estate Brokers	73-35-1
	36. Registered Foresters	73-36-1
	37. Sanitarians	73-37-1
	38. Speech Pathologists and Audiologists	73-38-1
	39. Veterinarians	73-39-1
	41. Athlete Agents [Repealed]	73-41-1

GENERAL OUTLINE

TITLE 73. PROFESSIONS AND VOCATIONS (Cont'd)

	Beginning Section
42. Uniform Athlete Agents Law	73-42-1
43. State Board of Medical Licensure	73-43-1
45. Information to Be Included in Prescriptions	73-45-1
47. [Reserved]	
49. Health Care Provider Licensing Boards	73-49-1
51. Unlicensed Practice of Profession	73-51-1
52. Licensure Records	73-52-1
53. Licensing and Regulation of Social Workers	73-53-1
54. Marriage and Family Therapists	73-54-1
55. Mississippi Athletic Trainers Licensure Act	73-55-1
57. Mississippi Respiratory Care Practice Act	73-57-1
59. Residential Builders and Remodelers	73-59-1
60. Home Inspectors	73-60-1
61. Tattooing and Body Piercing	73-61-1
63. Registered Professional Geologists Practice Act	73-63-1
65. Professional Art Therapists	73-65-1
67. Professional Massage Therapists	73-67-1
69. Mississippi Residential Electronic Protection Li- censing Act	73-69-1
71. Acupuncture Practice Act	73-71-1

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER	1. Uniform Commercial Code — General Provisions	75-1-101
	2. Uniform Commercial Code — Sales	75-2-101
2A.	Uniform Commercial Code — Leases	75-2A-101
	3. Uniform Commercial Code — Negotiable Instruments	75-3-101
	4. Uniform Commercial Code—Bank Deposits and Collections	75-4-101
4A.	Uniform Commercial Code—Funds Transfers ..	75-4A-101
	5. Uniform Commercial Code—Revised Article 5. Letters of Credit	75-5-101
	6. Uniform Commercial Code—Bulk Transfers	75-6-101
	7. Uniform Commercial Code—Documents of Title	75-7-101
	8. Uniform Commercial Code—Revised Article 8. Investment Securities	75-8-101
	9. Uniform Commercial Code—Secured Transactions	75-9-101
10.	Uniform Commercial Code—Effective Date and Repealer	75-10-101
11.	Uniform Commercial Code—Effective Date and Transition Provisions: 1977 Amendments	75-11-101

GENERAL OUTLINE

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

	Beginning Section
12. Uniform Electronic Transactions Act	75-12-1
13. Bills, Notes and Other Writings	75-13-1
15. Sale of Checks	75-15-1
17. Interest, Finance Charges, and Other Charges	75-17-1
18. Revolving Charge Agreements; Credit Cards [Repealed]	75-18-1
19. Seals	75-19-1
21. Trusts and Combines in Restraint or Hindrance of Trade	75-21-1
23. Fair Trade Laws	75-23-1
24. Regulation of Business for Consumer Protection	75-24-1
25. Registration of Trademarks and Labels	75-25-1
26. Mississippi Uniform Trade Secrets Act	75-26-1
27. Weights and Measures	75-27-1
29. Sale and Inspection of Food and Drugs	75-29-1
31. Milk and Milk Products	75-31-1
33. Meat, Meat-Food and Poultry Regulation and Inspection	75-33-1
35. Meat Inspection	75-35-1
37. Operation of Frozen Food Locker Plants	75-37-1
39. Sale of Baby Chicks	75-39-1
40. Importation and Sale of Animals or Birds	75-40-1
41. Gins	75-41-1
43. Farm Warehouses	75-43-1
44. Grain Warehouses	75-44-1
45. Commercial Feeds and Grains	75-45-1
47. Commercial Fertilizers	75-47-1
49. Factory-Built Homes	75-49-1
51. Water Heaters	75-51-1
53. Paints, Varnishes and Similar Materials	75-53-1
55. Gasoline and Petroleum Products	75-55-1
56. Antifreeze and Summer Coolants	75-56-1
57. Liquefied Petroleum Gases	75-57-1
58. Mississippi Natural Gas Marketing Act	75-58-1
59. Correspondence Courses	75-59-1
60. Proprietary Schools and Colleges	75-60-1
61. Manufacture and Sale of Jewelry and Optical Equipment	75-61-1
63. Sales of Cemetery Merchandise and Funeral Services	75-63-1
65. Going Out of Business Sales; Unsolicited Goods	75-65-1
66. Home Solicitation Sales	75-66-1

GENERAL OUTLINE

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS (Cont'd)

	Beginning Section
67. Loans	75-67-1
69. Farm Loan Bonds	75-69-1
71. Uniform Securities Law [Repealed effective January 1, 2010]	75-71-1
71. Mississippi Securities Act of 2009 [Effective January 1, 2010]	75-71-101
72. Business Takeovers	75-72-1
73. Hotels and Innkeepers	75-73-1
74. Youth Camps	75-74-1
75. Amusements, Exhibitions and Athletic Events	75-75-1
76. Mississippi Gaming Control Act	75-76-1
77. Repurchase of Inventories From Retailers Upon Termination of Contract	75-77-1
79. Pulpwood Scaling and Practices	75-79-1
81. Dance Studio Lessons	75-81-101
83. Health Spas	75-83-1
85. Transient Vendor	75-85-1
87. Contracts Between Out-of-State Principals and Commissioned Sales Representatives	75-87-1
89. Mississippi Commodities Enforcement Act	75-89-1
91. Truth in Music Advertising	75-91-1

TITLE 77. PUBLIC UTILITIES AND CARRIERS

CHAPTER	1. Public Service Commission	77-1-1
	2. Public Utilities Staff	77-2-1
	3. Regulation of Public Utilities	77-3-1
	5. Electric Power	77-5-1
	6. Municipal Gas Authority of Mississippi Law	77-6-1
	7. Motor Carriers	77-7-1
	9. Railroads and Other Common Carriers	77-9-1
	11. Gas Pipelines and Distribution Systems	77-11-1
	13. Regulation of Excavations Near Underground Utility Facilities	77-13-1
	15. Local Natural Gas Districts	77-15-1

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

CHAPTER	1. General Provisions Relative to Corporations	79-1-1
	3. Business Corporations [Repealed]	79-3-1
	4. Mississippi Business Corporation Act	79-4-1.01

GENERAL OUTLINE

TITLE 79. CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS (Cont'd)

	Beginning Section
5. Business Development Corporations [Repealed]	79-5-1
6. Foreign Limited Liability Companies [Repealed]	79-6-1
7. Small Business Investment Companies	79-7-1
9. Professional Corporations [Repealed]	79-9-1
10. Mississippi Professional Corporation Act	79-10-1
11. Nonprofit, Nonshare Corporations and Religious Societies	79-11-1
12. Partnerships [Repealed]	79-12-1
13. Uniform Partnership Act (1997)	79-13-101
14. Mississippi Limited Partnership Act	79-14-101
15. Investment Trusts	79-15-1
16. Mississippi Registration of Foreign Business Trusts Act	79-16-1
17. Agricultural Associations; Conversion to Corpo- rate Form	79-17-1
19. Agricultural Cooperative Marketing Associations	79-19-1
21. Aquatic Products Marketing Association	79-21-1
22. Mississippi Aquaculture Act of 1988	79-22-1
23. Commercial and Proprietary Information	79-23-1
25. Mississippi Shareholder Protection Act	79-25-1
27. Mississippi Control Share Act	79-27-1
29. Mississippi Limited Liability Company Act	79-29-101
31. Mississippi Registration of Foreign Limited Li- ability Partnerships Act [Repealed]	79-31-1
33. Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations	79-33-1

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS

CHAPTER	1. Department of Banking and Consumer Finance	81-1-1
	3. Incorporation and Organization of Banks	81-3-1
	5. General Provisions Relating to Banks and Banking	81-5-1
	7. Branch Banks	81-7-1
	8. Regional Banking Institutions	81-8-1
	9. Insolvent Banks	81-9-1
	11. Savings and Loan Associations [Repealed]	81-11-1
	12. Savings Associations Law	81-12-1
	13. Credit Unions	81-13-1
	14. Savings Bank Law	81-14-1

GENERAL OUTLINE

TITLE 81. BANKS AND FINANCIAL INSTITUTIONS (Cont'd)

	Beginning Section
15. Mississippi Rural Credit Law	81-15-1
17. Farmers' Credit Associations	81-17-1
18. Mississippi S.A.F.E. Mortgage Licensing Act of 2009	81-18-1
19. Consumer Loan Broker Act	81-19-1
20. Consumer Complaints and Disputes Against Mortgage Companies	81-20-1
21. Insurance Premium Finance Companies	81-21-1
22. Mississippi Debt Management Services Act	81-22-1
23. Interstate Bank Branching	81-23-1
25. The Mississippi International Banking Act	81-25-1
27. Multistate, State and Limited Liability Trust Institutions	81-27-1.001
29. Lender Trade Name and Trademark Use	81-29-1

TITLE 83. INSURANCE

CHAPTER	1. Department of Insurance	83-1-1
	2. Competitive Rating for Property and Casualty Insurance	83-2-1
	3. Insurance Commissioner, Rating Bureau and Rates	83-3-1
	5. General Provisions Relative to Insurance and Insurance Companies	83-5-1
	6. Registration and Examination of Insurers	83-6-1
	7. Life Insurance	83-7-1
	9. Accident, Health and Medicare Supplement Insurance	83-9-1
	11. Automobile Insurance	83-11-1
	13. Fire Insurance	83-13-1
	14. Homeowners' and Farmowners' Insurance [Repealed]	83-14-1
	15. Title Insurance	83-15-1
	17. Insurance Agents, Solicitors, or Adjusters	83-17-1
	18. Insurance Administrators and Managing Gen- eral Agents	83-18-1
	19. Domestic Companies	83-19-1
	20. Domicile Change for Domestic and Foreign Insurers	83-20-1
	21. Foreign Companies	83-21-1
	23. Insolvent Insurance Companies; Insurance Guaranty Association	83-23-1
	24. Insurers Rehabilitation and Liquidation Act	83-24-1

GENERAL OUTLINE

TITLE 83. INSURANCE (Cont'd)

	Beginning Section
25. Co-operative Insurance	83-25-1
27. Surety Companies	83-27-1
29. Fraternal Societies	83-29-1
30. Larger Fraternal Benefit Societies	83-30-1
31. Mutual Companies	83-31-1
33. Reciprocal Insurance	83-33-1
34. Windstorm Underwriting Association	83-34-1
35. Underwriting Association [Repealed]	83-35-1
36. Joint Underwriting Association for Medical Mal- practice Insurance	83-36-1
37. Burial Associations	83-37-1
38. Mississippi Residential Property Insurance Un- derwriting Association Law	83-38-1
39. Bail Bonds and Bondsmen	83-39-1
41. Hospital and Medical Service Associations and Contracts	83-41-1
43. Nonprofit Dental Service Corporations	83-43-1
45. Nonprofit, Community Service Blood Supply Plans	83-45-1
47. Nonprofit Medical Liability Insurance Corporations	83-47-1
48. Medical Malpractice Insurance Availability Act	83-48-1
49. Legal Expense Insurance	83-49-1
51. Dental Care Benefits	83-51-1
53. Credit Life and Credit Disability Insurance	83-53-1
54. Mississippi Creditor-Placed Insurance Act	83-54-1
55. Risk Retention Act	83-55-1
57. Home Warranties [Repealed].	83-57-1
58. New Home Warranty Act	83-58-1
59. Business Transacted With Producer Controlled Insurer Act	83-59-1
61. Voluntary Basic Health Insurance Coverage Law	83-61-1
62. Health Savings Accounts	83-62-1
63. Small Employer Health Benefit Plans	83-63-1
64. Health Discount Plans	83-64-1
65. Regulation of Vehicle Service Contracts	83-65-101
67. Utilization of Modern Systems for Holding and Transferring Securities Without Physical Delivery	83-67-1
69. Interstate Insurance Product Regulation Compact	83-69-1

GENERAL OUTLINE

TITLE 85. DEBTOR-CREDITOR RELATIONSHIP

	Beginning Section
CHAPTER	
1. Assignment for Benefit of Creditors	85-1-1
3. Exempt Property	85-3-1
5. Joint and Several Debtors	85-5-1
7. Liens	85-7-1
8. Uniform Federal Lien Registration Act	85-8-1
9. Debt Adjusting or Credit Arranging [Repealed].	85-9-1

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS

CHAPTER	
1. Gambling and Future Contracts	87-1-1
3. Power and Letters of Attorney	87-3-1
5. Principal and Surety	87-5-1
7. Improvements to Real Property	87-7-1
9. General Provisions	87-9-1

TITLE 89. REAL AND PERSONAL PROPERTY

CHAPTER	
1. Land and Conveyances	89-1-1
2. Liability of Recreational Landowners	89-2-1
3. Acknowledgments	89-3-1
5. Recording of Instruments	89-5-1
6. Mississippi Plane Coordinate System	89-6-1
7. Landlord and Tenant	89-7-1
8. Residential Landlord and Tenant Act	89-8-1
9. Condominiums	89-9-1
11. Escheats	89-11-1
12. Uniform Disposition of Unclaimed Property Act	89-12-1
13. Party Fences	89-13-1
15. Party Walls	89-15-1
17. Salvage	89-17-1
19. Mississippi Conservation Easements	89-19-1
21. Uniform Disclaimer of Property Interests Act ..	89-21-1
23. Mississippi Uniform Environmental Covenants Act	89-23-1

TITLE 91. TRUSTS AND ESTATES

CHAPTER	
1. Descent and Distribution	91-1-1
3. Uniform Simultaneous Death Law	91-3-1
5. Wills and Testaments	91-5-1
7. Executors and Administrators	91-7-1
9. Trusts and Trustees	91-9-1
11. Fiduciary Security Transfers	91-11-1

GENERAL OUTLINE

TITLE 91. TRUSTS AND ESTATES (Cont'd)

	Beginning Section
13. Fiduciary Investments	91-13-1
15. Release of Powers of Appointment	91-15-1
17. Uniform Principal and Income Law	91-17-1
19. Gifts to Minors [Repealed]	91-19-1
20. Transfers to Minors	91-20-1
21. Uniform Transfer-on-Death Security Registra- tion Act	91-21-1

TITLE 93. DOMESTIC RELATIONS

CHAPTER		
	1. Marriage	93-1-1
	3. Husband and Wife	93-3-1
	5. Divorce and Alimony	93-5-1
	7. Annulment of Marriage	93-7-1
	9. Bastardy	93-9-1
	11. Enforcement of Support of Dependents	93-11-1
	12. Enforcement of Child Support Orders from For- eign Jurisdictions	93-12-1
	13. Guardians and Conservators	93-13-1
	15. Termination of Rights of Unfit Parents	93-15-1
	16. Grandparents' Visitation Rights	93-16-1
	17. Adoption, Change of Name, and Legitimation of Children	93-17-1
	19. Removal of Disability of Minority	93-19-1
	21. Protection from Domestic Abuse	93-21-1
	22. Uniform Interstate Enforcement of Domestic Vi- olence Protection Orders	93-22-1
	23. Uniform Child Custody Jurisdiction Act [Repealed]	93-23-1
	25. Uniform Interstate Family Support Act	93-25-1
	27. Uniform Child Custody Jurisdiction and En- forcement Act	93-27-101
	29. Uniform Child Abduction Prevention Act	93-29-1

TITLE 95. TORTS

CHAPTER		
	1. Libel and Slander	95-1-1
	3. Nuisances	95-3-1
	5. Trespass	95-5-1
	7. Liability Exemption for Donors of Food	95-7-1
	9. Liability Exemption for Volunteers and Sports Officials	95-9-1
	11. Liability Exemption for Equine and Livestock Activities	95-11-1

GENERAL OUTLINE

TITLE 95. TORTS (Cont'd)

	Beginning Section
13. Liability Exemption for Noise Pollution by Sport- shooting Ranges	95-13-1

TITLE 97. CRIMES

CHAPTER	1. Conspiracy, Accessories and Attempts	97-1-1
	3. Crimes Against the Person	97-3-1
	5. Offenses Affecting Children	97-5-1
	7. Crimes Against Sovereignty or Administration of Government	97-7-1
	9. Offenses Affecting Administration of Justice	97-9-1
	11. Offenses Involving Public Officials	97-11-1
	13. Election Crimes	97-13-1
	15. Offenses Affecting Highways, Ferries and Waterways	97-15-1
	17. Crimes Against Property	97-17-1
	19. False Pretenses and Cheats	97-19-1
	21. Forgery and Counterfeiting	97-21-1
	23. Offenses Affecting Trade, Business and Professions	97-23-1
	25. Offenses Affecting Railroads, Public Utilities and Carriers	97-25-1
	27. Crimes Affecting Public Health	97-27-1
	29. Crimes Against Public Morals and Decency	97-29-1
	31. Intoxicating Beverage Offenses	97-31-1
	32. Tobacco Offenses	97-32-1
	33. Gambling and Lotteries	97-33-1
	35. Crimes Against Public Peace and Safety	97-35-1
	37. Weapons and Explosives	97-37-1
	39. Dueling	97-39-1
	41. Cruelty to Animals	97-41-1
	43. Racketeer Influenced and Corrupt Organization Act (RICO)	97-43-1
	44. Mississippi Streetgang Act	97-44-1
	45. Computer Crimes and Identity Theft	97-45-1

TITLE 99. CRIMINAL PROCEDURE

CHAPTER	1. General Provisions; Time Limitations; Costs ...	99-1-1
	3. Arrests	99-3-1
	5. Bail	99-5-1
	7. Indictment	99-7-1
	9. Process	99-9-1
	11. Jurisdiction and Venue	99-11-1

GENERAL OUTLINE

TITLE 99. CRIMINAL PROCEDURE (Cont'd)

	Beginning Section
13. Insanity Proceedings	99-13-1
15. Pretrial Proceedings	99-15-1
17. Trial	99-17-1
18. Mississippi Capital Defense Litigation Act	99-18-1
19. Judgment, Sentence, and Execution	99-19-1
20. Community Service Restitution	99-20-1
21. Fugitives From Other States	99-21-1
23. Peace Bonds	99-23-1
25. Forms	99-25-1
27. Proceedings for Intoxicating Beverage Offenses	99-27-1
29. Vagrancy Proceedings	99-29-1
31. Obscene Publications Proceedings [Repealed] ..	99-31-1
33. Prosecutions Before Justice Court Judges	99-33-1
35. Appeals	99-35-1
36. Victim Assistance Coordinator	99-36-1
37. Restitution to Victims of Crimes	99-37-1
38. Crime Victim's Escrow Account Act	99-38-1
39. Post-Conviction Proceedings	99-39-1
40. Office of Indigent Appeals	99-40-1
41. Mississippi Crime Victims' Compensation Act ..	99-41-1
43. Mississippi Crime Victims' Bill of Rights	99-43-1
45. Statewide Automated Victim Information and Notification System	99-45-1
47. Victim of Domestic Violence, Sexual Assault or Stalking Address Confidentiality Program	99-47-1
49. Preservation and Accessibility of Biological Evidence	99-49-1

MISSISSIPPI CODE 1972

ANNOTATED

VOLUME EIGHTEEN

TITLE 79

CORPORATIONS, ASSOCIATIONS, AND PARTNERSHIPS

Chapter 1.	General Provisions Relative to Corporations	79-1-1
Chapter 3.	Business Corporations [Repealed]	
Chapter 4.	Mississippi Business Corporation Act	79-4-1.01
Chapter 5.	Business Development Corporations [Repealed]	
Chapter 6.	Foreign Limited Liability Companies [Repealed]	
Chapter 7.	Small Business Investment Companies	79-7-1
Chapter 9.	Professional Corporations [Repealed]	
Chapter 10.	Mississippi Professional Corporation Act	79-10-1
Chapter 11.	Nonprofit, Nonshare Corporations and Religious Societies ...	79-11-1
Chapter 12.	Partnerships [Repealed]	
Chapter 13.	Uniform Partnership Act (1997)	79-13-101
Chapter 14.	Mississippi Limited Partnership Act	79-14-101
Chapter 15.	Investment Trusts	79-15-1
Chapter 16.	Mississippi Registration of Foreign Business Trusts Act	79-16-1
Chapter 17.	Agricultural Associations; Conversion to Corporate Form ...	79-17-1
Chapter 19.	Agricultural Cooperative Marketing Associations	79-19-1
Chapter 21.	Aquatic Products Marketing Association	79-21-1
Chapter 22.	Mississippi Aquaculture Act of 1988	79-22-1
Chapter 23.	Commercial and Proprietary Information	79-23-1
Chapter 25.	Mississippi Shareholder Protection Act	79-25-1
Chapter 27.	Mississippi Control Share Act	79-27-1
Chapter 29.	Mississippi Limited Liability Company Act	79-29-101
Chapter 31.	Mississippi Registration of Foreign Limited Liability Partner- ships Act [Repealed]	
Chapter 33.	Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations	79-33-1

CHAPTER 1

General Provisions Relative to Corporations

SEC.	
79-1-1.	Extension of expired fifty-year charters.
79-1-3.	Gifts and donations.
79-1-5.	Execution of proxies by fiduciary without order or direction of court.
79-1-7.	Defective organization not a defense.
79-1-9.	Social, civil and political rights of employees protected.

- 79-1-11. May execute bond in suits.
 - 79-1-13. Property and franchise of corporation salable under judgment.
 - 79-1-15. Franchise redeemable within six months.
 - 79-1-17. On dissolution, assets vested in stockholders.
 - 79-1-19 through 79-1-27. Repealed.
 - 79-1-29. Repealed.
 - 79-1-31. Extent of the chapter.
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Editor's Note — For text of the Mississippi Business Corporation Act, which became effective January 1, 1988, see §§ 79-4-1.01 et seq.

§ 79-1-1. Extension of expired fifty-year charters.

Whenever the period of existence of a corporation heretofore created with a life of fifty (50) years shall have expired prior to April 17, 1950, then every such corporation which shall continue to do business for ninety (90) days after April 17, 1950, by the doing of such business shall be deemed to have accepted an extension of the time of life of such corporation to a full period of ninety-nine (99) years from the date of the original charter thereof. Such corporation shall continue in existence as a de jure corporation as fully and completely as if the charter thereof had been thus amended prior to the end of the original fifty-year period. Likewise, whenever the period of existence of a corporation heretofore created for a period of fifty (50) years, shall expire hereafter, if such corporation shall continue to do business thereafter for a period of ninety (90) days, the same shall operate as an acceptance of an extension of time of the life of such corporation to a full period of ninety-nine (99) years from the date of the original charter thereof, and such corporation shall continue in existence as a de jure corporation as fully and completely as if the charter thereof had been thus amended prior to the end of the original fifty-year period.

Provided, however, that when a corporation adopts by proper resolution the provisions of this section, it shall, within ninety (90) days thereafter, file in the office of the secretary of state and also in the office of the chancery clerk of the county of its domicile, a copy of the said resolution, duly certified to by the secretary with the corporate seal affixed thereto. Upon the filing of this resolution, it shall be recorded by the secretary of state and the chancery clerk and proper index made thereof in the said offices to show the extension of the corporate existence of the particular corporation, and a proper certificate forwarded to the corporation for its record. The fee of the secretary of state for filing and recording the said resolution shall be the sum of five dollars (\$5.00), and the fee of the chancery clerk shall be the sum of two dollars and fifty cents (\$2.50).

Provided, further, that the provisions of this section shall in no way, shape, form or fashion abate or nullify any suit or claim, of whatsoever kind or nature, accrued, or to accrue prior to April 17, 1950.

SOURCES: Codes, 1942, § 5325.5; Laws, 1950, ch. 308, §§ 3, 4; Laws, 1956, ch. 174, § 1.

Cross References — Business corporations, see §§ 79-4-1.01 et seq.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations §§ 74 et seq. **Practice References.** Mississippi Business Organizations Laws Annotated, 2004 Edition (Michie).
CJS. 18 C.J.S., Corporations § 111.

§ 79-1-3. Gifts and donations.

In addition to all other powers granted by law, every corporation organized or existing under the laws of this state shall have power, from its earnings, to make gifts, donations, or contributions for the public welfare or for charitable, scientific, religious, or educational purposes, which gifts, donations, or contributions shall be charged by such corporation to operating expenses. The specific grant of such power by this section shall not be construed as raising any presumption or implication that such power has not heretofore existed.

SOURCES: Codes, 1942, § 5325.7; Laws, 1952, ch 227.

Cross References — Power of business corporations to make gifts and donations, see § 79-4-3.02.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1801 et seq.
CJS. 19 C.J.S., Corporations § 1041.

§ 79-1-5. Execution of proxies by fiduciary without order or direction of court.

Without obtaining the order or direction of any court or the judge thereof, in vacation, any fiduciary, including those acting as executor, administrator, guardian, agent or trustee, owning corporate stock registered in the name of the fiduciary, as such, or in the name of another for the convenience of the fiduciary, or in the names of more than one fiduciary, whether the corporation issuing such stock is foreign or domestic, may, in addition to the voting rights now vested in such fiduciary, execute and deliver, or cause to be executed and delivered, a proxy or proxies to others for the voting of such corporate stock, and may waive notice of and give consent to any meeting of stockholders of any corporation, regular or special, or a meeting of property owners, or cause such to be done, and may authorize in writing any action which could be taken by stockholders in meeting assembled, where such consent is authorized by statute, charter or certificate of incorporation, or bylaws, or cause such written consent to be given, but subject always to the following limitations:

(a) In granting any proxy, reasonable care must be exercised in deciding who shall act as proxy and whether or not instructions as to the voting of said stock shall be given to such proxy.

(b) If there are two or more fiduciaries acting, the proxy shall be executed by, and voting instructions shall be issued by, agreement of all fiduciaries or a majority of them.

(c) In the event the manner or method of voting, or the purposes to be accomplished, are fixed by the instrument or instruments appointing said fiduciaries, the directions contained therein shall govern.

SOURCES: Codes, 1942, § 5326.5; Laws, 1956, ch. 178.

RESEARCH REFERENCES

ALR. Misrepresentation in proxy solicitation-state cases. 20 A.L.R.4th 1287.

§ 79-1-7. Defective organization not a defense.

It shall not be a defense to any suit against a corporation that there was a defect or informality in its organization.

SOURCES: Codes, 1892, § 841; 1906, § 906; Hemingway's 1917, § 4078; 1930, § 4154; 1942, § 5333.

Cross References — As to defense of ultra vires, see § 79-4-3.04.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 188 et seq.

CJS. 18 C.J.S., Corporations § 125.

§ 79-1-9. Social, civil and political rights of employees protected.

Any corporation doing business in this state shall be liable to a penalty of two hundred fifty dollars (\$250.00) for every unlawful interference with the social, civil, or political rights of any of its agents or employees, and the same may be recovered by suit, to be brought by the injured party.

SOURCES: Codes, 1892, § 840; 1906, § 905; Hemingway's 1917, § 4077; 1930, § 4156; 1942, § 5335.

Cross References — Constitutional provision for protection of social, civil, or political rights of corporate agents and employees, see Miss. Const. § 191.

Political contributions by corporation as criminal offense, see §§ 97-13-15, 97-13-17.

RESEARCH REFERENCES

ALR. Right of corporation to discharge employee who asserts rights as stockholder. 84 A.L.R.3d 1107.

Recovery for discharge for employment in retaliation for filing workers' compensation claim. 32 A.L.R.4th 1221.

Right to discharge allegedly "at will" employee as affected by employer's promulgation of employment policies as to discharge. 33 A.L.R.4th 120.

Conduct or activities of employees during off-duty hours as misconduct barring unemployment compensation benefits. 35 A.L.R.4th 691.

Liability for discharge of at-will employee for in-plant complaints or efforts relating to working conditions affecting health or safety. 35 A.L.R.4th 1031.

Right of employee to injunction preventing employer from exposing employee to tobacco smoke in workplace. 37 A.L.R.4th 480.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees. 51 A.L.R.4th 702.

Liability for discharge of employee from private employment on ground of political views or conduct. 38 A.L.R.5th 39.

Application of state law to age discrimination in employment. 51 A.L.R.5th 1.

What acts amount to violation of Hatch Act (5 USC §§ 1501-1503) prohibiting political activity of certain state and local employees. 8 A.L.R. Fed. 343.

Prohibiting public employee from running for elective office as violation of employee's federal constitutional rights. 44 A.L.R. Fed. 306.

Employer's discharge of employee as unlawful employment practice in violation of § 704(a) of Civil Rights Act of 1964 (42 USCS § 2000e-3(a)) where basis for discharge is employee's opposition to discriminatory conduct of co-worker. 49 A.L.R. Fed. 712.

Dissemination of adverse employment references by former employer as unlaw-

ful employment practice under Title VII of Civil Rights Act of 1964 (42 USCS § 2000e-2(a)(1)). 50 A.L.R. Fed. 722.

What will be deemed a "written interpretation or opinion of the Commission" which employer can assert as defense under § 713(b) of the Equal Employment Opportunity Act (42 USCS § 2000e-12(b)(1)). 54 A.L.R. Fed. 868.

Circumstances in Title VII employment discrimination cases (42 USCS §§ 2000e et seq.) which warrant finding of "constructive discharge" of discriminatee who resigns employment. 55 A.L.R. Fed. 418.

Prohibition of discrimination against, or discharge of, employee because of exercise of right afforded by Occupational Safety and Health Act, under § 11(c)(1) of the act (29 USCS § 660(c)(1)). 66 A.L.R. Fed. 650.

Propriety, under unfair labor practice provisions of National Labor Relations Act (29 USCS § 158(a)), of employer's selective discipline of employees who are union officials and who participated in unauthorized strike. 66 A.L.R. Fed. 801.

Dismissal of, or other adverse personnel action relating to, public employee for political patronage reasons as violative of First Amendment. 70 A.L.R. Fed. 371.

Propriety of treating separate entities as one for determining number of employees required by Title VII of Civil Rights Act of 1964 (42 U.S.C.S. § 2000e(b)) for action against "employer." 160 A.L.R. Fed. 441.

Preemption of state law wrongful discharge claim, not arising from whistleblowing, by § 541(A) of Employee Retirement Income Security Act of 1974 (29 U.S.C.S. § 1144(A)). 176 A.L.R. Fed. 433.

§ 79-1-11. May execute bond in suits.

Any corporation, under the signature of its president or other authorized officer, agent, or attorney, may execute, without affixing the corporate seal, all bonds which shall be necessary at the commencement or during the progress of any case to a final determination, and such bonds shall be binding on the corporation.

SOURCES: Codes, 1857, ch. 35, art. 7; 1871, § 2411; 1880, § 1035; 1892, § 842; 1906, § 907; Hemingway's 1917, § 4079; 1930, § 4157; 1942, § 5336.

§ 79-1-13. Property and franchise of corporation salable under judgment.

When judgment shall be rendered against any corporation, all its property, real and personal, and its franchise shall be liable to be seized and sold in satisfaction thereof; and the sale shall vest the title to the franchise in the purchaser, with all privileges and immunities; and the officer making the sale shall immediately put him in possession; and the purchaser may recover any penalties imposed for injuries to the franchise, and shall also discharge all the duties imposed by the charter on the corporate body, and be liable to like penalties as the original stockholders which may accrue after his purchase of the franchise.

SOURCES: Codes, 1857, ch. 35, art. 10; 1871, § 2414; 1880, § 1038; 1892, § 845; 1906, § 910; Hemingway's 1917, § 4082; 1930, § 4158; 1942, § 5337.

Cross References — Sales of property in quo warranto proceedings, see § 11-39-33. Executions generally, see §§ 13-3-111 et seq.

JUDICIAL DECISIONS

1. In general.
2. What may be sold.
3. Miscellaneous.

1. In general.

This section [Code 1942, § 5337] does not refer to primary franchise of corporation, but to its secondary or special franchise. *Gulf Ref. Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158 (1926).

Franchises of corporation are (1) corporate or general franchises, which are franchises to exist as corporation; (2) special or secondary franchises, which are certain rights conferred on existing corporation. *Gulf Ref. Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158 (1926).

Franchise is special privilege conferred by governmental authority, and which does not belong to citizens of the country generally as matter of common right. *Gulf Ref. Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158 (1926).

Term "corporate franchise" ordinarily refers to primary franchise of corporation; that is, right and privilege granted by state of being corporation and doing such things as are authorized by its charter. *Gulf Ref. Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158 (1926).

2. What may be sold.

Primary franchise of corporation cannot be sold under execution on judgment, but its special and secondary franchises may be so sold. *Gulf Ref. Co. v. Cleveland Trust Co.*, 166 Miss. 759, 108 So. 158 (1926).

3. Miscellaneous.

A corporation cannot defeat the right of its creditors to sell the equity of redemption by executing a deed of trust with long time to run, etc.; this would palpably violate the section [Code 1942, § 5337]. *Vicksburg & M.R.R. v. McCutchen*, 52 Miss. 645 (1876).

RESEARCH REFERENCES

Am Jur. 39 Am. Jur. Proof of Facts 2d 699, Franchisor's Liability for Acts of Franchisee.

CJS. 19 C.J.S., Corporations §§ 1342 et seq.

§ 79-1-15. Franchise redeemable within six months.

Those persons who were stockholders at the time of the sale of the franchise of a corporation may redeem the franchise which has been sold under execution at any time within six (6) months from the date of sale, by paying or tendering to the purchaser the amount paid by him, with ten per centum thereon; but shall not be entitled to any allowance for the profits received by the purchaser in the meantime.

SOURCES: Codes, 1857, ch. 35, art. 11; 1871, § 2415; 1880, § 1039; 1892, § 846; 1906, § 911; Hemingway's 1917, § 4083; 1930, § 4159; 1942, § 5338.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations
§ 630.

CJS. 19 C.J.S., Corporations § 1343.

§ 79-1-17. On dissolution, assets vested in stockholders.

On the dissolution of any corporation, either by judgment or otherwise, all its real and personal estate shall be vested in the stockholders therein, in their respective proportions, who shall hold the same as tenants in common; but this section shall not extend to any property except that which the corporation might lawfully have held without forfeiting the same to the state. Debts due to and from the corporation shall not be extinguished by its dissolution, but debts due from the corporation shall be a charge upon its property.

SOURCES: Codes, 1857, ch. 35, art. 21; 1880, § 1040; 1892, § 847; 1906, § 912; Hemingway's 1917, § 4084; 1930, § 4172; 1942, § 5354.

Cross References — Administrative dissolution of business corporations, see §§ 79-4-14.20 et seq.

JUDICIAL DECISIONS

1. In general.
2. Transfer or sale of property.
3. Debts charged against corporate property.
4. Rights of creditors.
5. Actions.
6. Miscellaneous.

1. In general.

Upon the dissolution of a corporation, the property and assets of the corporation constitute a trust fund for the benefit of its creditors and stockholders. *Franks v. Receiver of Booneville Banking Co.*, 202 Miss. 858, 32 So. 2d 859 (1947).

Upon dissolution of oil corporation, all its assets became vested in the stockholders as tenants in common in proportion to their respective stockholdings. *Urschel v. Stone*, 198 Miss. 105, 21 So. 2d 466 (1945).

2. Transfer or sale of property.

Automatic transfer or investing of ownership in stockholder upon dissolution of corporation is not a sale to the stockholder. *Urschel v. Stone*, 198 Miss. 105, 21 So. 2d 466 (1945).

The provisions of this section [Code 1942, § 5354] do not deprive a corporation of its rights, in good faith, to dispose of its

property, or create such a trust as affects this right when exercised in good faith. *Sells v. Rosedale Grocery & Comm'n Co.*, 72 Miss. 590, 17 So. 236 (1895).

A corporation, though insolvent, may prefer creditors by mortgage, sale or assignment, where there is no fraud. *Sells v. Rosedale Grocery & Comm'n Co.*, 72 Miss. 590, 17 So. 236 (1895).

3. Debts charged against corporate property.

Statute making "debts" due from corporation a charge upon its property after dissolution includes tort demands. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Where a corporation has transferred all its property to another and ceased to do business, its property may, in equity, be subjected to the demand of its creditors while in the hands of the purchasing corporation. *Vicksburg & Y.C. Tel. Co. v. Citizens' Tel. Co.*, 79 Miss. 341, 30 So. 725, 89 Am. St. R. 656 (1901).

4. Rights of creditors.

Corporation's existence as debtor is continued after dissolution only for purposes of suit against it for adjudication of debt or demand upon its merits, and creditor, upon obtaining judgment against corporation, may pursue stockholders to whom corporation's assets have been distributed. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Failure of creditor of corporation receiving notice of dissolution thereof to file claim does not result in canceling or barring claim. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

5. Actions.

Express reservation by statute of rights of creditors of corporation after dissolution carries with it necessarily reasonable means for enforcement of rights so preserved. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Persons asserting claims against corporation after final decree for corporation's

liquidation was entered and liquidator discharged were not required to obtain permission of chancery court to sue corporation, and suit against liquidator was no longer proper. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Claimant who failed to assert tort claim against corporation pursuant to notice given creditors of corporation's dissolution could, after dissolution distribution to stockholders of assets, and discharge of liquidator, sue corporation for adjudication of merits of claim, preliminary to taking steps against stockholders as distributees of corporation's assets. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Proceeding by stockholders of a corporation by bill in equity, averring its insolvency, with no party defendant, and praying for a receiver to collect its assets and distribute pro rata to its creditors, was absolutely void. *Smith v. Ely & Walker Dry Goods Co.*, 79 Miss. 266, 30 So. 653 (1901).

6. Miscellaneous.

Net book value of the assets at time of dissolution based on cost to the corporation, rather than the "liquidation value" of such asset, continues to represent the cost of the assets for purposes of computing depletion and depreciation allowances on a stockholder's interest in such assets after dissolution, in determining the stockholder's income tax. *Urschel v. Stone*, 198 Miss. 105, 21 So. 2d 466 (1945).

An agreement between the existing members of a local lodge of a fraternal society to abandon the lodge as such and to discontinue its corporate functions, to divide up the personal property, together with an arrangement to rent the property and share in the rent thereof was effective to determine the status of the parties thereto as tenants in common as would have been their status after formal surrender, notwithstanding there was no legal dissolution. *Woodville Lodge, No. 3581 v. Poole*, 190 Miss. 798, 1 So. 2d 780 (1941).

RESEARCH REFERENCES

ALR. Preferred stockholders' rights, right, or trademark owned by corporation upon liquidation or dissolution, to dividends. 25 A.L.R.2d 788. on dissolution thereof. 30 A.L.R.2d 938.

CJS. 19 C.J.S., Corporations §§ 1638 et seq. Stockholders' rights to patent, copy-

§§ 79-1-19 through 79-1-27. Repealed.

Repealed by Laws, 1987, ch. 486, § 17.05, eff from and after January 1, 1988.

[Codes, 1906, §§ 915, 917-919; Hemingway's 1917, §§ 4089, 4091-4093; 1930, §§ 4160, 4162, 4163, 4166; 1942, §§ 5339, 5341, 5342, 5345; Laws, 1908, ch. 123]

Editor's Note — Former Sections 79-1-19 through 79-1-27 contained provisions applicable to foreign corporations. For present similar provisions of the Mississippi Business Corporation Act, which became effective January 1, 1988, see §§ 79-4-15.01 et seq.

§ 79-1-29. Repealed.

Repealed by Laws, 1991, ch. 573, § 141, eff from and after July 1, 1991.

[Codes, 1906, § 920; Hemingway's 1917, § 4094; 1930, § 4167; 1942, § 5346; Laws, 1908, ch. 123; repealed, Laws, 1987, ch. 486, § 17.05, effective from and after January 1, 1988;]

§ 79-1-31. Extent of the chapter.

The provisions of this chapter, when not limited by their terms, shall apply to all corporations whatever, where the subject matter is not elsewhere prescribed.

SOURCES: Codes, 1892, § 860; 1906, § 937; Hemingway's 1917, § 4115; 1930, § 4177; 1942, § 5359.

JUDICIAL DECISIONS

1. In general.

The powers of a corporation created under general laws are derived from the statute and not from its charter provisions, and a corporation chartered under

Code 1892, Chapter 25, can exercise only the powers therein prescribed. *Woodbury v. McClurg*, 78 Miss. 831, 29 So. 514 (1901).

CHAPTER 3

Business Corporations [Repealed]

Editor's Note — For text of the Mississippi Business Corporation Act, which became effective January 1, 1988, see §§ 79-4-1.01 et seq.

§§ 79-3-1 through 79-3-293. Repealed.

Repealed by Laws, 1987, ch. 486, § 17.06, eff from and after January 1, 1988.

§§ 79-3-1 through 79-3-11. [[Codes, 1942, §§ 5309-01 through 5309-6; Laws, 1962, ch. 235, §§ 1-6]

§ 79-3-13. [Codes, 1942, § 5309-11; Laws, 1962, ch. 235, § 7]

§ 79-3-15. [Codes, 1942, § 5309-12; Laws, 1962, ch. 235, § 8; Laws, 1983, ch. 370]

§ 79-3-17. [Codes, 1942, § 5309-13; Laws, 1962, ch. 235, § 9]

§ 79-3-19. [Codes, 1942, § 5309-14; Laws, 1962, ch. 235, § 10]

§ 79-3-21. [Codes, 1942, § 5309-21; Laws, 1962, ch. 235, § 11]

§ 79-3-23. [Codes, 1942, § 5309-22; Laws, 1962, ch. 235, § 12]

§ 79-3-25. [Codes, 1942, § 5309-23; Laws, 1962, ch. 235, § 13; Laws, 1981, ch. 431, § 5]

§§ 79-3-27 through 79-3-35. [Codes, 1942, §§ 5309-31 through 5309-35; Laws, 1962, ch. 235, §§ 14-18]

§ 79-3-37. [Codes, 1942, § 5309-36; Laws, 1962, ch. 235, § 19; Laws, 1980, ch. 404]

§ 79-3-39. [Codes, 1942, § 5309-23; Laws, 1962, ch. 235, § 13; Laws, 1981, ch. 431, § 5]

§ 79-3-41. [Codes, 1942, § 5309-38; Laws, 1962, ch. 235, § 21]

§ 79-3-43. [Codes, 1942, § 5309-39; Laws, 1962, ch. 235, § 22; Laws, 1966, ch. 285, § 1; 1968, ch. 273, § 1]

§§ 79-3-45 through 79-3-53. [Codes, 1942, §§ 5309-40, 5309-51 through 5309-54; Laws, 1962, ch. 235, §§ 23-27]

§ 79-3-55. [Codes, 1942, § 5309-55; Laws, 1962, ch. 235, § 28; Laws, 1981, ch. 371, § 1]

§ 79-3-57. [Codes, 1942, § 5309-56; Laws, 1962, ch. 235, § 29; Laws, 1981, ch. 371, § 2]

§§ 79-3-59 through 79-3-65. [Codes, 1942, §§ 5309-57 through 5309-60; Laws, 1962, ch. 235, §§ 30-33]

§ 79-3-67. [Codes, 1942, § 5309-71; Laws, 1962, ch. 235, § 34; Laws, 1981, ch. 387, § 1]

§§ 79-3-69 through 79-3-81. [Codes, 1942, §§ 5309-72 through 5309-78; Laws, 1962, ch. 235, §§ 35-41]

§§ 79-3-83 through 79-3-87. [Codes, 1942, §§ 5309-81 through 5309-83; Laws, 1962, ch. 235, §§ 42-4]

§§ 79-3-89 through 79-3-105. [Codes, 1942, §§ 5309-91 through 5309-93, 5309-111, 5309-112, 5309-121, 5309-122; Laws, 1967, ch. 235, §§ 45-53]

§ 79-3-107. [Codes, 1942, § 5309-123; Laws, 1962, ch. 235, § 54; Laws, 1962, 2d Ex Sess, ch. 17; Laws, 1983, ch. 403, § 2]

§§ 79-3-109 through 79-3-113. [Codes, 1942, §§ 5309-124 through 5309-126; Laws, 1962, ch. 235, §§ 55-57]

§§ 79-3-115 through 79-3-121. [Codes, 1942, §§ 5309-131 through 5309-134; Laws, 1962, ch. 235, §§ 58-61]

§ 79-3-123. [Codes, 1942, § 5309-135; Laws, 1962, ch. 235, § 62; Laws, 1962, 2d Ex Sess. ch. 14; Laws, 1983, ch. 403, § 3]

§§ 79-3-125 through 79-3-139. [Codes, 1942, §§ 5309-136 through 5309-145; Laws, 1962, ch. 235, §§ 63-70]

§ 79-3-141. [Codes, 1942, § 5309-151; Laws, 1962, ch. 235, § 71; Laws, 1981, ch. 334, § 1]

§ 79-3-142. [Laws, 1984, ch. 337]

§§ 79-3-143 and 79-3-145. [Codes, 1942, §§ 5309-152, 5309-153; Laws, 1962, ch. 235, §§ 72, 73]

§§ 79-3-147 through 79-3-149. [Codes, 1942, §§ 5309-154, 5309-155; Laws, 1962, ch. 235, §§ 74, 75; Laws, 1962, 2d Ex Sess. chs. 15, 16; Laws, 1983, ch. 403, §§ 4 and 5]

§§ 79-3-151 through 79-3-157. [Codes, 1942, §§ 5309-156, 5309-157, 5309-161, 5309-162; Laws, 1962, ch. 235, §§ 76-79]

§ 79-3-159. [Codes, 1942, § 5309-171; Laws, 1962, ch. 235, § 80; Laws, 1985, ch. 449, § 3]

§ 79-3-161. [Codes, 1942, § 5309-172; Laws, 1962, ch. 235, § 81]

§ 79-3-163. [Codes, 1942, § 5309-181; Laws, 1962, ch. 235, § 82; Laws, 1962, 2d Ex Sess. ch. 13; Laws, 1983, ch. 403, § 6]

§§ 79-3-165 through 79-3-247. [Codes, 1942, §§ 5309-182 through 5309-192, 5309-201 through 5309-239; Laws, 1962, ch. 235, §§ 83-124]

§ 79-3-249. [Codes, 1942, § 5309-251; Laws, 1962, ch. 235, § 125; Laws, 1971, ch. 365, § 1; Laws, 1975, ch. 467, § 9]

§ 79-3-253. [Codes, 1942, § 5309-261; Laws, 1962, ch. 235, § 127; Laws, 1975, ch. 467, § 11]

§ 79-3-255. [Codes, 1942, § 5309-262; Laws, 1962, ch. 235, § 128; Laws, 1963, 1st Ex Sess. ch. 14; Laws, 1981, ch. 431, § 2; Laws, 1985, ch. 381, § 13]

§ 79-3-257. [Codes, 1942, § 5309-263; Laws, 1962, ch. 235, § 129; Laws, 1970, ch. 307, § 1; Laws, 1981, ch. 431, § 6; Laws, 1985, ch. 381, § 14]

§ 79-3-259. [Codes, 1942, § 5309-271; Laws, 1962, ch. 235, § 130; Laws, 1975, ch. 467, § 12]

§ 79-3-261. [Codes, 1942, § 5309-272; Laws, 1962, ch. 235, § 131]

§ 79-3-263. [Codes, 1942, § 5309-273; Laws, 1962, ch. 235, § 132; Laws, 1985, ch. 381, § 15]

§§ 79-3-265 through 79-3-293. [Codes, 1942, §§ 5309-281 through 5309-287, 5309-301 through 5309-304, 5309-311 through 5309-314; Laws, 1962, ch. 235, §§ 133-147]

CHAPTER 4

Mississippi Business Corporation Act

Article 1.	General Provisions	79-4-1.01
Article 2.	Incorporation	79-4-2.01
Article 3.	Purposes and Powers	79-4-3.01
Article 4.	Name	79-4-4.01
Article 5.	Office and Agent	79-4-5.01
Article 6.	Shares and Distributions	79-4-6.01
Article 7.	Shareholders	79-4-7.01
Article 8.	Directors and Officers	79-4-8.01
Article 10.	Amendment of Articles of Incorporation and Bylaws	79-4-10.01
Article 11.	Merger and Share Exchange	79-4-11.01
Article 12.	Sale of Assets	79-4-12.01
Article 13.	Appraisal Rights	79-4-13.01
Article 14.	Dissolution	79-4-14.01
Article 15.	Foreign Corporations	79-4-15.01
Article 16.	Records and Reports	79-4-16.01
Article 17.	Transition Provisions	79-4-17.01

ARTICLE 1.

GENERAL PROVISIONS.

Subarticle A.	Short Title and Reservation of Power.....	79-4-1.01
Subarticle B.	Filing Documents.....	79-4-1.20
Subarticle C.	Secretary of State.....	79-4-1.30
Subarticle D.	Definitions.....	79-4-1.40
Subarticle E.	Recording of Articles of Incorporation. [Repealed]	

SUBARTICLE A.

SHORT TITLE AND RESERVATION OF POWER.

SEC.

79-4-1.01.	Short title.
79-4-1.02.	Reservation of power to amend or repeal.

§ 79-4-1.01. Short title.

Sections 79-4-1.01 et seq. shall be known and may be cited as the “Mississippi Business Corporation Act.”

SOURCES: Laws, 1987, ch. 486, § 1.01, eff from and after January 1, 1988.

Cross References — Formation of research corporation by universities pursuant to the Mississippi Business Corporation Act, see § 37-147-15.

Definitions of terms used in the Mississippi Business Corporation Act, see § 79-4-1.40.

Use of fictitious names not controlled by §§ 79-4-1.01 et seq., see § 79-4-4.01.

Application of Mississippi Business Corporation Act to professional corporations, see § 79-10-3.

Application of Business Corporation Act to meeting of shareholders held to determine the voting rights to be accorded to shares acquired in control share acquisition, see § 79-27-9.

Applicability of Mississippi Business Corporation Act to trust companies, see § 81-27-4.107.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
- 2.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-1.
12. Under former § 79-3-5.

I. Under Current Law.

1. In general.

In a close corporation where a majority stockholder stands to benefit as a controlling stockholder, the majority's action must be "intrinsically fair" to the minority interest. Thus, stockholders in close corporations must bear towards each other the same relationship of trust and confidence which prevails in partnerships, rather than resort to statutory defenses. This does not mean that directors, executive officers and stockholders are not required to adhere to the corporate statutes; rather, blind adherence to corporate statutes may not be used to circumvent the corporation's by-laws, charter or various agreements, such as a stock redemption agreement, because of the "intrinsically fair" standard that is now adopted. *Fought v. Morris*, 543 So. 2d 167 (Miss. 1989).

2.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-1.

A corporation organized under the general corporation law of Mississippi, al-

though possessing some of the features of a cooperative, is organized for profit, and all of its profits whether from member or non-member business constitute income to it, except to the extent that it was under obligation to make patronage dividends, refunds, or rebates, or any portion thereof, to patrons whether stockholders or not. *Smith & Wiggins Gin, Inc. v. Commissioner*, 341 F.2d 341 (5th Cir. 1965).

12. Under former § 79-3-5.

Kings Daughters and Sons Circle, incorporated for purpose of constructing and operating hospital, held private corporation within Miss. Const., Art. 7, § 183. *Brister v. Leflore County*, 156 Miss. 240, 125 So. 816 (1930).

Rule that corporation is separate entity from its stockholders will be disregarded when used to support an end subversive of the state's policy. *Southern Elec. Sec. Co. v. State*, 91 Miss. 195, 44 So. 785, 124 Am. St. R. 638 (1907).

A mutual fire insurance company empowered by its charter to insure its members only, and having no capital stock, cannot be authorized to carry on the business of insurance. *Farmers' Mut. Fire Ins. Co. v. Cole*, 90 Miss. 508, 43 So. 949 (1907).

The powers of a corporation created under general laws are derived from the statute and not from its charter provisions, and a corporation chartered under this chapter can only exercise the powers therein prescribed. *Woodbury v. McClurg*, 78 Miss. 831, 29 So. 514 (1901).

RESEARCH REFERENCES

Law Reviews. Hamilton, The background of the new Mississippi Business Corporation Act. 12 Miss. C. L. Rev. 166, Fall, 1991.

Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss L. J. 271, August, 1987.

§ 79-4-1.02. Reservation of power to amend or repeal.

The Mississippi Legislature has power to amend or repeal all or part of Sections 79-4-1.01 et seq. at any time and all domestic and foreign corporations subject to Sections 79-4-1.01 et seq. are governed by the amendment or repeal.

SOURCES: Laws, 1987, ch. 486, § 1.02, eff from and after January 1, 1988.

SUBARTICLE B.**FILING DOCUMENTS.****SEC.**

- | | |
|------------|---|
| 79-4-1.20. | Filing requirements. |
| 79-4-1.21. | Forms. |
| 79-4-1.22. | Filing service and copying fees; discounts; expedited filing service. |
| 79-4-1.23. | Effective time and date of document. |
| 79-4-1.24. | Correcting filed document. |
| 79-4-1.25. | Duty of Secretary of State. |
| 79-4-1.26. | Appeal from Secretary of State's refusal to file document. |
| 79-4-1.27. | Evidentiary effect of copy of filed document. |
| 79-4-1.28. | Certificate of existence. |
| 79-4-1.29. | Penalty for signing false document. |

§ 79-4-1.20. Filing requirements.

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) Section 79-4-1.01 et seq. must require or permit filing the document in the Office of the Secretary of State.

(c) The document must contain the information required by Section 79-4-1.01 et seq. It may contain other information as well.

(d) The document must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The

document may but need not contain a corporate seal, an attestation, acknowledgment or verification. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.

(h) If the Secretary of State has prescribed a mandatory form for the document under Section 79-4-1.21, the document must be in or on the prescribed form.

(i) The document must be delivered to the Office of the Secretary of State for filing. Delivery may be made by electronic transmission if, to the extent and in the manner permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document except as provided in Sections 79-4-5.03 and 79-4-15.09.

(j) When the document is delivered to the Office of the Secretary of State for filing, the correct filing fee, and any franchise tax, license fee, or penalty required to be paid therewith by this section or any other law must be paid or provision for payment made in a manner permitted by the Secretary of State.

(k) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

(2) The facts may include, but are not limited to:

(i) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(ii) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(iii) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) As used in this subsection:

(i) "Filed document" means a document filed with the Secretary of State under any provision of this chapter except Article 15 or Section 79-4-16.21; and

(ii) "Plan" means a plan of domestication, nonprofit conversion, entity conversion, merger or share exchange.

(4) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(i) The name and address of any person required in a filed document.

(ii) The registered office of any entity required in a filed document.

(iii) The registered agent of any entity required in a filed document.

(iv) The number of authorized shares and designation of each class or series of shares.

(v) The effective date of a filed document.

(vi) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subsection (k)(2)(i) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subsection (k)(5) are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

SOURCES: Laws, 1987, ch. 486, § 1.20; Laws, 1995, ch. 362, § 1; Laws, 1997, ch. 418, § 1; Laws, 2004, ch. 495, § 1, eff from and after July 1, 2004.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, errors in two statutory references in (k)(3)(i) were corrected by substituting "Article 15" for "Chapter 15" and "Section 79-4-16.21" for "Section 16.21."

Cross References — Filing service and copying fees, see § 79-4-1.22

Correcting a filed document, see § 79-4-1.24.

Requirement that Secretary of State file document that satisfies the requirements of this section, see § 79-4-1.25.

Penalty for signing false document, see § 79-4-1.29.

Definitions of certain terms used in this section, see § 79-4-1.40.

Copy of records to be maintained at principal office, see § 79-4-16.01.

Requirements for filing documents by non profit corporation, see § 79-11-105.

§ 79-4-1.21. Forms.

(a) The Secretary of State may prescribe and furnish on request forms for: (1) an application for a certificate of existence, (2) a foreign corporation's application for a certificate of authority to transact business in this state, (3) a foreign corporation's application for a certificate of withdrawal and (4) the annual report. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by Sections 79-4-1.01 et seq. but their use is not mandatory.

SOURCES: Laws, 1987, ch. 486, § 1.21, eff from and after January 1, 1988.

Cross References — Necessity that documents that Secretary of State has prescribed a mandatory form for under this section be filed in or on that prescribed form, see § 79-4-1.20.

Collection of filing fee greater than fee set out in § 79-4-1.22 authorized if prescribed form not used, see § 79-4-1.22.

Secretary of State may prescribe forms for use by nonprofit corporation, see § 79-11-107.

§ 79-4-1.22. Filing service and copying fees; discounts; expedited filing service.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

Document	Fee
(1) Articles of incorporation	\$ 50.00
(2) Application for use of indistinguishable name	25.00
(3) Application for reserved name	25.00
(4) Notice of transfer of reserved name	25.00
(5) Application for registered name	50.00
(6) Application for renewal of registered name	50.00
(7) Corporation's statement of change of registered agent or registered office or both	10.00
(8) Agent's statement of change of registered office for each affected corporation	10.00
not to exceed a total of	1,000.00
(9) Agent's statement of resignation	No fee
(10) Amendment of articles of Incorporation	0.00
(11) Restatement of articles of incorporation	0.00
with amendment of articles	0.00
(12) Articles of merger or share exchange	0.00
(13) Articles of dissolution	5.00
(14) Articles of revocation of dissolution	25.00
(15) Certificate of administrative dissolution	No fee
(16) Application for reinstatement following administrative dissolution	50.00
(17) Certificate of reinstatement	No fee
(18) Certificate of judicial dissolution	No fee
(19) Application for certificate of authority	500.00
(20) Application for amended certificate of authority	50.00
(21) Application for certificate of withdrawal	25.00
(22) Certificate of revocation of authority to transact business	No fee
(23) Application for reinstatement following administrative revocation	100.00
(24) Certificate of reinstatement	No fee
(25) Annual report	25.00
(26) Articles of correction	50.00
(27) Application for certificate of existence or authorization	25.00
(28) Any other document required or permitted to be filed by Section 79-4-1.01 et seq.	5.00

(b) The Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) each time process is served on him under Section 79-4-1.01 et seq.

The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) One Dollar (\$1.00) a page for copying; and
- (2) Ten Dollars (\$10.00) for the certificate.

(d) The Secretary of State may collect a filing fee greater than the fee set out herein, not to exceed the actual costs of processing the filing, if the form for filing as prescribed by the Secretary of State has not been used.

(e) The Secretary of State may promulgate rules to:

- (1) Reduce the filing fees prescribed in this section or provide for discounts of fees to encourage online filing of documents or for other reasons as determined by the Secretary of State; and
- (2) Provide for documents to be filed and accepted on an expedited basis upon the request of the applicant. The Secretary of State may promulgate rules to provide for an additional reasonable filing fee not to exceed Twenty-five Dollars (\$25.00) to be paid by the applicant and collected by the Secretary of State for the expedited filing services.

SOURCES: Laws, 1987, ch. 486, § 1.22; Laws, 1991, ch. 509, § 6; Laws, 1994, ch. 536, § 1; Laws, 2009, ch. 530, § 1, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment, substituted “costs of processing the filing, if the form for filing as prescribed” for “costs of processing such filing, if the form for such filing prescribed” in (d); and added (e).

Cross References — Definitions of terms used in the Mississippi Business Corporation Act, see § 79-4-1.40.

Filing fees for nonprofit corporation, see § 79-11-109.

§ 79-4-1.23. Effective time and date of document.

(a) Except as provided in subsection (b) and Section 79-4-1.24(c), a document accepted for filing is effective:

- (1) At the date and time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

(c) Notwithstanding subsections (a) and (b) of this section, any document that has a delayed effective time and date shall not become effective if, prior to the effective time and date, a statement of withdrawal is filed with the Secretary of State.

SOURCES: Laws, 1987, ch. 486, § 1.23; Laws, 1994, ch. 417 § 5; Laws, 1997, ch. 418, § 2, eff from and after July 1, 1997.

Cross References — Effective date of articles of correction, see § 79-4-1.24.
Effective date of nonprofit corporations's filed documents, see § 79-11-111.

§ 79-4-1.24. Correcting filed document.

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if (1) the document contains an inaccuracy, or (2) the document was defectively executed, attested, sealed, verified or acknowledged, or (3) the electronic transmission was defective.

(b) A document is corrected:

(1) By preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the inaccuracy or defect to be corrected, and (iii) correct the inaccuracy or defect; and

(2) By delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

SOURCES: Laws, 1987, ch. 486, § 1.24; Laws, 1997, ch. 418, § 3, eff from and after July 1, 1997.

Cross References — Fee for filing articles of correction, see § 79-4-1.22.

Effective time and date of documents accepted for filing other than articles of correction, see § 79-4-1.23.

§ 79-4-1.25. Duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 79-4-1.20, the Secretary of State shall file it.

(b) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in Sections 79-4-5.03 and 79-4-15.09, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

SOURCES: Laws, 1987, ch. 486, § 1.25; Laws, 1997, ch. 418, § 4, eff from and after July 1, 1997.

Cross References — Filing service and copying fees, see § 79-4-1.22.

Appeal from Secretary of State's refusal to file document, see § 79-4-1.25.

Duty of Secretary of State to file nonprofit corporation documents, see § 79-11-115.

§ 79-4-1.26. Appeal from Secretary of State's refusal to file document.

(a) If the Secretary of State refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal to the chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of his refusal to file.

(b) The court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 486, § 1.26, eff from and after January 1, 1988.

Cross References — Duty of Secretary of State regarding filing of document, see § 79-4-1.25.

Appeal from Secretary of State's refusal to file nonprofit corporation document, see § 79-11-117.

§ 79-4-1.27. Evidentiary effect of copy of filed document.

A certificate from the Secretary of State delivered with a copy of the document filed by the Secretary of State, is conclusive evidence that the original document is on file with the Secretary of State.

SOURCES: Laws, 1987, ch. 486, § 1.27; Laws, 1997, ch. 418, § 5, eff from and after July 1, 1997.

Cross References — Evidentiary effect of certificate of existence or authorization, see § 79-4-1.28.

§ 79-4-1.28. Certificate of existence.

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(b) A certificate of existence or authorization sets forth:

(1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(2) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation and the period of its duration, if less than perpetual; or (ii) that the foreign corporation is authorized to transact business in this state;

(3) That all fees, taxes and penalties owed to this state have been paid, if (i) payment is reflected in the records of the Secretary of State; and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) That its most recent annual report required by Section 79-4-16.22 has been delivered to the Secretary of State;

(5) That articles of dissolution have not been filed; and

(6) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

SOURCES: Laws, 1987, ch. 486, § 1.28, eff from and after January 1, 1988.

Cross References — Application for certificate of existence or authorization fee, see § 79-4-1.22.

Evidentiary effect of copy of filed document, see § 79-4-1.27.

Penalty for signing false document, see § 79-4-1.29.

Application for and contents of certificate of existence for nonprofit corporation, see § 79-11-121.

§ 79-4-1.29. Penalty for signing false document.

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed Five Hundred Dollars (\$500.00).

SOURCES: Laws, 1987, ch. 486, § 1.29, eff from and after January 1, 1988.

Cross References — Penalty for signing false document, non profit corporation, see § 79-11-123.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1612 et seq., 1642, 1643.

CJS. 19 C.J.S., Corporations §§ 924, 977.

SUBARTICLE C.

SECRETARY OF STATE.

SEC.

79-4-1.30. Powers.

§ 79-4-1.30. Powers.

The Secretary of State has the power reasonably necessary to perform the duties required of him by Sections 79-4-1.01 et seq.

SOURCES: Laws, 1987, ch. 486, § 1.30, eff from and after January 1, 1988.

Cross References — Duty of Secretary of State regarding filing of documents, see § 79-4-1.25.

Authority to commence proceeding to administratively dissolve corporation, see § 79-4-14.20.

Notice under the Mississippi Nonprofit Corporation Act, see § 79-11-129.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1612, 1613.

36 Am. Jur. 2d, Foreign Corporations §§ 222, 300.

CJS. 19 C.J.S., Corporations § 979.

20 C.J.S., Corporations §§ 1819, 1820.

SUBARTICLE D.

DEFINITIONS.

SEC.

79-4-1.40. Act definitions.

79-4-1.41. Notice.

79-4-1.42. Number of shareholders.

79-4-1.43. Qualified director.

79-4-1.44. Householding.

§ 79-4-1.40. Act definitions.

In Section 79-4-1.01 et seq.:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of Section 79-4-1.01 et seq.

(5) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(6) “Distribution” means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) “Effective date of notice” is defined in Section 79-4-1.41.

(8) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(9) “Employee” includes an officer but not a director. A director may accept duties that make him also an employee.

(9AA) “Expenses” means reasonable expenses of any kind that are incurred in connection with a matter.

(10) “Entity” includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government.

(11) “Facts objectively ascertainable” outside of a filed document or plan is defined in Section 79-4-1.20(k).

(12) “Filing entity” means an other entity that is of a type that is created by filing a public organic document.

(13) “Foreign corporation” means a corporation for profit incorporated under a law other than the law of this state.

(14) “Governmental subdivision” includes authority, county, district and municipality.

(15) “Includes” denotes a partial definition.

(16) “Individual” includes the estate of an incompetent or deceased individual.

(17) “Means” denotes an exhaustive definition.

(18) “Notice” is defined in Section 79-4-1.41.

(19) “Person” includes individual and entity.

(20) “Principal office” means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(21) “Proceeding” includes civil suit and criminal, administrative and investigatory action.

(22) “Public corporation” means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(23) “Record date” means the date established under Article 6 or 7 on which a corporation determines the identity of its shareholders and their

shareholdings for purposes of Section 79-4-1.01 et seq. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(24) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 79-4-8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(25) "Shares" means the unit into which the proprietary interests in a corporation are divided.

(26) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(27) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

(28) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

(29) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(30) "United States" includes district, authority, bureau, commission, department and any other agency of the United States.

(31) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or Section 79-4-1.01 et seq. are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or Section 79-4-1.01 et seq. to vote generally on the matter are for that purpose a single voting group.

(32) "Voting power" means the current power to vote in the election of directors.

SOURCES: Laws, 1987, ch. 486, § 1.40; Laws, 1988, ch. 369, § 1; Laws, 1997, ch. 418, § 6; Laws, 2000, ch. 469, § 1; Laws, 2004, ch. 495, § 2; Laws, 2006, ch. 429, § 1; Laws, 2007, ch. 361, § 1, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment added (9AA).

RESEARCH REFERENCES

Law Reviews. Hamilton, The background of the new Mississippi Business Corporation Act. 12 Miss. C. L. Rev. 166, Fall, 1991.

§ 79-4-1.41. Notice.

(a) Notice under Section 79-4-1.01 et seq. shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(b) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (ii) when electronically transmitted to the shareholder in a manner authorized by the shareholder.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If Section 79-4-1.01 et seq. prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation, or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of Section 79-4-1.01 et seq., those requirements govern.

SOURCES: Laws, 1987, ch 486, § 1.41; Laws, 1997, ch. 418, § 7; Laws, 2007, ch. 361, § 2, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment substituted “the secretary of the corporation” for “the corporation or its secretary” in (d).

Cross References — Other definitions relative to the Mississippi Business Corporation Act., see § 79-4-1.40.

§ 79-4-1.42. Number of shareholders.

(a) For purposes of Sections 79-4-1.01 et seq., the following identified as a shareholder in a corporation's current record of shareholders constitutes one (1) shareholder:

(1) Three (3) or fewer co-owners;

(2) A corporation, partnership, trust, estate or other entity;

(3) The trustees, guardians, custodians or other fiduciaries of a single trust, estate or account.

(b) For purposes of Sections 79-4-1.01 et seq., shareholdings registered in substantially similar names constitute one (1) shareholder if it is reasonable to believe that the names represent the same person.

SOURCES: Laws, 1987, ch. 486, § 1.42, eff from and after January 1, 1988.

RESEARCH REFERENCES

ALR. Validity and construction of provision restricting transfer of corporate stock, which conditions transfer upon consent of one other than shareholder, officer, or director of corporation. 53 A.L.R.3d 1272.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December, 1979.

§ 79-4-1.43. Qualified director.

(a) A “qualified director” is a director who, at the time action is to be taken under:

(1) Section 79-4-7.44, does not have (i) a material interest in the outcome of the proceeding, or (ii) a material relationship with a person who has such an interest;

(2) Section 79-4-8.53 or 79-4-8.55, (i) is not a party to the proceeding, (ii) is not a director as to whom a transaction is a director’s conflicting interest transaction or who sought a disclaimer of the corporation’s interest in a business opportunity under Section 79-4-8.70, which transaction or disclaimer is challenged in the proceeding, and (iii) does not have a material relationship with a director described in either clause (i) or clause (ii) of this subsection (a)(2);

(3) Section 79-4-8.62, is not a director (i) as to whom the transaction is a director’s conflicting interest transaction, or (ii) who has a material relationship with another director as to whom the transaction is a director’s conflicting interest transaction; or

(4) Section 79-4-8.70, would be a qualified director under subsection (a)(3) if the business opportunity were a director’s conflicting interest transaction.

(b) For purposes of this section:

(1) “Material relationship” means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action to be taken; and

(2) “Material interest” means an actual or potential benefit or detriment (other than one which would devolve on the corporation or the shareholders generally) that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action to be taken.

(c) The presence of one or more of the following circumstances shall not automatically prevent a director from being a qualified director:

(1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter (or by any person that has a material relationship with that director), acting alone or participating with others;

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director), is or was also a director; or

(3) With respect to action to be taken under Section 79-4-7.44, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

SOURCES: Laws, 2006, ch. 429, § 2, eff from and after July 1, 2006.

§ 79-4-1.44. Householding.

(a) A corporation has delivered written notice or any other report or statement under this chapter, the articles of incorporation or the bylaws to any shareholders who share a common address if:

(1) The corporation delivers one (1) copy of the notice, report or statement to the common address;

(2) The corporation addresses the notice, report or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and

(3) Each of those shareholders consents to delivery of a single copy of such notice, report or statement to the shareholders' common address.

Any such consent shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking shareholder no later than thirty (30) days after delivery of the written notice of revocation.

(b) Any shareholder who fails to object by written notice to the corporation, within sixty (60) days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by subsection (a), shall be deemed to have consented to receiving such single copy at the common address.

SOURCES: Laws, 2007, ch. 361, § 3, eff from and after July 1, 2007.

Cross References — Notice under the Mississippi Business Corporation Act, see § 79-4-1.41.

SUBARTICLE E.

RECORDING OF ARTICLES OF INCORPORATION
[REPEALED].

§ 79-4-1.50. Repealed.

Repealed by Laws, 1988, ch. 368, § 13, eff from and after passage (approved April 18, 1988).

[En Laws, 1987, ch. 486, § 1.50]

Editor's Note — Former § 79-4-1.50 related to the recording of articles of incorporation.

ARTICLE 2.

INCORPORATION.

SEC.

- 79-4-2.01. Incorporators.
- 79-4-2.02. Articles of incorporation.
- 79-4-2.03. Incorporation.
- 79-4-2.04. Liability of preincorporation transactions.
- 79-4-2.05. Organization of corporation.
- 79-4-2.06. Bylaws.
- 79-4-2.07. Emergency bylaws.

§ 79-4-2.01. Incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

SOURCES: Laws, 1987, ch. 486, § 201, eff from and after January 1, 1988.

Cross References — Articles of incorporation, see § 79-4-202.

Voluntary dissolution of corporation by incorporators, see § 79-4-14.01.

Revocation of dissolution, see § 79-4-14.04.

Incorporators under Mississippi Nonprofit Corporation Act, see § 79-11-135.

RESEARCH REFERENCES

ALR. Rights and liabilities of promoters or incorporators inter se under their contracts for issuance of stock to them in return for services. 8 A.L.R.2d 722.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 161, 162.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:11 et seq.

CJS. 18 C.J.S., Corporations § 56.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-2.02. Articles of incorporation.

(a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of Section 79-4-4.01;

(2) The number of shares the corporation is authorized to issue and any information concerning the authorized shares as required by Section 79-4-6.01;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and

(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; and

(iv) A par value for authorized shares or classes of shares;

(3) Any provision that under Section 79-4-1.01 et seq. is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of Section 79-4-8.33; or

(iv) An intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability as defined in Section 79-4-8.50(5) to any person for any action taken, or any failure to take any action, as a director, except liability for:

(i) Receipt of a financial benefit to which he is not entitled;

(ii) An intentional infliction of harm on the corporation or its shareholders;

(iii) A violation of Section 79-4-8.33; or

(iv) An intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in Section 79-4-1.01 et seq.

(d) For the purposes of this section, a "director" shall include any person vested with the discretion or powers of a director under Section 79-4-7.32.

(e) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 79-4-1.20(k).

SOURCES: Laws, 1987, ch. 486, § 202; Laws, 1991, ch. 509, § 1; Laws, 1994, ch. 417, § 1; Laws, 1996, ch. 459 § 1; Laws, 2004, ch. 495, § 3, eff from and after July 1, 2004.

Cross References — Fee for filing articles of incorporation, see § 79-4-1.22.

Absent specified delayed effective date, corporate existence begins upon filing articles of incorporation, see § 79-4-2.03.

Articles of incorporation must set forth certain information regarding shares that the corporation is authorized to issue, see § 79-4-6.01.

Mandatory indemnification, see § 79-4-8.52.

Amendment of articles of incorporation generally, see §§ 79-4-10.01 et seq.

Articles of amendment, see § 79-4-10.06.

Restatement of articles of incorporation, see § 79-4-10.07.

Applicability of this section to amendment of articles of incorporation to carry out plan of reorganization ordered or decreed by court, see § 79-4-10.08.

Expiration of corporation's period of duration stated in its articles of incorporation as ground for administrative dissolution, see § 79-4-14.20.

Corporation's obtaining its articles of incorporation through fraud as ground for judicial dissolution of corporation, see § 79-4-14.30.

Copy of articles or restated articles of incorporation and all amendments to them currently in effect to be maintained at corporation's principal office, see § 79-4-16.01.

Articles of incorporation under Mississippi Nonprofit Corporation Act, see § 79-11-137.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-105.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-105.

11. In general.

Shareholders in bank seeking to enforce an agreement wherein defendant shareholders and certain of the complainants had pledged "individually not to seek control (of the bank) through ownership or control of stock by ourselves or any other person, and by proxy or otherwise" were not entitled to injunction requiring defendant signatories to vote their stock for the reelection of the present bank directors because the usage of the word "individually" in the agreement appeared to conflict

with the subsequent phrase "through ownership or control of stock by ourselves or any other person," and it was not therefore discernable whether the agreement contemplated that no signatory would seek to acquire or hold 51 percent of stock in the corporation or whether the agreement referred to joint action of the signatories; nor was evidence sufficient to justify the issuance of an injunction where there was no proof of resulting injury to the complaining shareholders stemming from the nomination by defendant shareholders of persons other than the present directors; moreover, stipulation of counsel as to who held how many shares of stock in proxy did not indicate that defendants could have succeeded in electing their nominees. *Crocker v. Farmers & Merchants Bank*, 293 So. 2d 438 (Miss. 1974).

Charter restriction prohibiting the transfer of stock of a family corporation without consent of the shareholders was legitimate and reasonable insofar as it

prohibited transfers of stock outside the family, but the prohibition against transfers within the family without the permission of each shareholder was unduly restrictive in that it served no reasonable purpose and was permissive to one dissenting shareholder thwarting the corporate business to the frustration of other shareholders by arbitrarily withholding consent, there being no charter or other provision for relief from such situation. *Fayard v. Fayard*, 293 So. 2d 421, 69 A.L.R.3d 1322 (Miss. 1974).

A state chartered savings and loan association, by substantial compliance with the provisions of Code 1942, § 5310, obtained a charter amendment, which became effective prior to the effective date of Code 1942, §§ 5288-01 et seq., authorizing it to move its principal office or place of business from Columbus to Oxford. *North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n*, 250 Miss. 463, 166 So. 2d 119 (1964).

Evidence that a husband and wife, as majority stockholders, organized a corporation only a few days before the institution of an action against the husband, and the charter had neither been published in a newspaper nor recorded in the office of the chancery clerk, and no report of the corporation's organization had been made to the secretary of state, and the husband and wife, after filing of the suit, transferred certain shares of stock to another as collateral for a loan, showed that the organization of the corporation was intended as a stand-by device to put the husband's property beyond execution without the necessary good faith for the existence of a de facto corporation, so that the lien of the judgment creditor was superior to the corporation's claim of ownership to an automobile, which had been transferred to it by the husband in exchange for stock shortly before the commencement of the suit. *United Sewing Mach. Distribs., Inc. v. Calhoun*, 231 Miss. 390, 95 So. 2d 453 (1957).

Hospital with outstanding capital stock qualifies as a nonprofit corporation able to accept grant for aid from the state inas-

much as in all functions which are part of the state hospital plan, the hospital is in fact and by law, by charter and by its contract with state hospital commission a nonprofit institution under the supervision of the commission and also since the statute recognizes the possibility that there may be outstanding stock in a nonprofit corporation which does not allow any of its profits to inure to the benefit of any shareholder. *Craig v. Mercy Hospital-Street Mem.*, 209 Miss. 490, 47 So. 2d 867 (1950).

Change of corporation's domicile from place stated in its charter by stockholders' resolution, as authorized by charter, held matter of internal management not requiring charter amendment, in absence of statutory prohibition. *Estes v. Bank of Walnut Grove*, 172 Miss. 499, 159 So. 104 (1935).

Charter grant of right to stockholders of corporation to change domicile thereof held not violation of statutes or constitution nor inimical to public policy or private right, in view of statute authorizing service on secretary of state of process against corporations failing to file names of agents on whom process may be served. *Estes v. Bank of Walnut Grove*, 172 Miss. 499, 159 So. 104 (1935).

Chancery court of county from which domestic corporation, garnished as debtor of foreign bank in attachment suit against latter, moved its property, office, and place of stockholders' meeting, as permitted by its charter, before issuance of process for it to sheriff of such county, had no territorial jurisdiction of such bank or garnishee. *Estes v. Bank of Walnut Grove*, 172 Miss. 499, 159 So. 104 (1935).

State may forfeit charter of fraternal corporation soliciting members by falsely representing that they will be received into regular Masonic lodges throughout the United States, and may restrain receiving members by such means pending trial of forfeiture proceedings. *Cuney v. State*, 142 Miss. 894, 108 So. 298 (1926).

Corporation advertising that it will make loans where its funds and its method of doing business made it impos-

sible for it to comply with its promise, held to show an intention to defraud justifying revocation of its charter or an injunction against its doing business. *Jackson Loan & Trust Co. v. State*, 101 Miss. 440, 56 So. 293 (1911).

Corporations may be dealt with in a different manner from individuals, their charters being held at the legislative will, subject to amendment or repeal. *State v. Jackson Cotton Oil Co.*, 95 Miss. 6, 48 So. 300 (1909).

The capital stock of a corporation, the charter not providing otherwise, may be paid for in property at its actual value. *Ferguson v. Oxford Mercantile Co.*, 78 Miss. 65, 27 So. 877 (1900).

The words of a charter are to be considered rather as those of the incorporators than of the state. *State ex rel. Dist. Att'y v. Simmons*, 70 Miss. 485, 12 So. 477 (1893).

RESEARCH REFERENCES

ALR. Construction and application of provisions of articles, bylaws, statutes, or agreements restricting alienation or transfer of corporate stock. 2 A.L.R.2d 745.

Applicability of statutes regulating sale of assets or property of corporation as affected by purpose or character of corporation. 9 A.L.R.2d 1306.

Validity, construction, and effect of articles of incorporation or stock certificates relating to call, redemption, or retirement of common stock. 48 A.L.R.2d 392.

Construction and effect of corporate articles, charter, or bylaws limiting duration or maturity of indebtedness. 55 A.L.R.2d 949.

Construction and effect of corporate bylaws or articles relating to change in number of directors. 3 A.L.R.3d 623.

Corporation: validity of charter provision for non-voting common stock. 52 A.L.R.3d 1131.

Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 A.L.R.4th 392.

Am Jur. 18 Am. Jur. 2d, Corporations §§ 78 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:121 et seq., 74:191 et seq., 74:631 et seq., 74:1224 et seq., 74:1266 et seq.

CJS. 18 C.J.S., Corporations §§ 101 et seq.

Law Reviews. 1979 Mississippi Supreme Court Review: Corporate & Commercial Law. 50 Miss. L. J. 741, December, 1979.

§ 79-4-2.03. Incorporation.

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

SOURCES: Laws, 1987, ch. 486, § 2.03, eff from and after January 1, 1988.

Cross References — Articles of incorporation content, see § 79-4-2.02.

Unless otherwise provided in articles of incorporation, corporation has perpetual duration and succession in its corporate name, see § 79-4-302.

Incorporation under Mississippi Nonprofit Corporation Act, see § 79-11-139.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-107.

12. Under former § 79-3-109.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-107.

An agricultural co-operative association organized under the act of Congress (7 USCS §§ 291, 292) authorizing the formation of such associations for the sole purpose of providing marketing facilities and sales services to growers of cotton, is not a "corporation for profit," within the meaning of the state statute, where the association, the stock of which is owned exclusively by regional and state co-operative associations, itself derives no profit from its activities, and in fact is expressly re-

ferred to in the act of Congress as being "not for profit," and, although it is authorized to pay dividends on its preferred stock, this stock is simply for use in borrowing money from a governmental agency. *American Cotton Coop. Ass'n v. Union Compress & Whse. Co.*, 193 Miss. 43', 7 So. 2d 537, 139 A.L.R. 1483 (1942).

This section [Code 1942, § 5343] does not require corporation authorized to do business by compliance with former statute to refile its charter and pay fees again. *Power v. Calvert Mtg. Co.*, 112 Miss. 319, 73 So. 51 (1916).

12. Under former § 79-3-109.

Incorporators who, following the issuance of a certificate of incorporation but prior to the payment into the treasury of the corporation of the required \$1,000 as consideration for the issuance of shares, executed, as officers of the corporation, its note for \$25,000, were not individually on the corporation's note. *Payment v. Hardin*, 218 So. 2d 889 (Miss. 1969).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations § 74.

CJS. 18 C.J.S., Corporations § 109.

§ 79-4-2.04. Liability of preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under Sections 79-4-1.01 et seq., are jointly and severally liable for all liabilities created while so acting.

SOURCES: Laws, 1987, ch. 486, § 2.04, eff from and after January 1, 1988.

Cross References — Liability for purporting to act for corporation prior to incorporation under Mississippi Nonprofit Corporation Act, see § 79-11-141.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 187.

4 Am. Jur. Proof of Facts 1, Doing Business.

CJS. 18 C.J.S., Corporations §§ 95-98.

§ 79-4-2.05. **Organization of corporation.**

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation;

or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by Sections 79-4-1.01 et seq. to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state.

SOURCES: Laws, 1987, ch. 486, § 2.05, eff from and after January 1, 1988.

Cross References — Bylaws, see § 79-4-2.06.

Emergency bylaws, see § 79-4-2.07.

Organization of corporation under Mississippi Nonprofit Corporation Act, see § 79-11-143.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 184 et seq. **CJS.** 19 C.J.S., Corporations § 828-833.

§ 79-4-2.06. **Bylaws.**

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

SOURCES: Laws, 1987, ch. 486, § 2.06, eff from and after January 1, 1988.

Cross References — Articles of incorporation content, see § 79-4-2.02.

Emergency bylaws, see § 79-4-2.07.

Power to amend bylaws, see § 79-4-302.

Amendment of bylaws, see §§ 79-4-10.20 et seq.

Copy of bylaws or restated bylaws and all amendments to them currently in effect to be maintained at corporation's principal office, see § 79-4-16.01.

Bylaws under Mississippi Nonprofit Corporation Act, see § 79-11-145.

RESEARCH REFERENCES

ALR. Construction and application of provisions of articles, bylaws, statutes, or agreements restricting alienation or transfer of corporate stock. 2 A.L.R.2d 745.

Conflict of laws as to validity and effect of corporate bylaw. 27 A.L.R.2d 435.

Construction and effect of corporate articles, charter, or bylaws limiting duration or maturity of its indebtedness. 55 A.L.R.2d 949.

Construction and effect of corporate bylaws or articles relating to change in number of directors. 3 A.L.R.3d 623.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 258 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:782-74:784, 74:941 et seq.

CJS. 18 C.J.S., Corporations §§ 244 et seq.

§ 79-4-2.07. Emergency bylaws.

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (1) Procedures for calling a meeting of the board of directors;
- (2) Quorum requirements for the meeting; and
- (3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

SOURCES: Laws, 1987, ch. 486, § 207; Laws, 1988, ch. 368, § 1, eff from and after passage (approved April 18, 1988).

Cross References — Articles of incorporation content, see § 79-4-2.02.

Bylaws, generally, see § 79-4-2.06.

Emergency powers of board of directors of corporation, see § 79-4-3.03.

Emergency bylaws under Mississippi Nonprofit Corporation Act, see § 79-11-147.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations § 1267.

ARTICLE 3.

PURPOSES AND POWERS.

SEC.

79-4-3.01.	Purposes.
79-4-3.02.	General powers.
79-4-3.03.	Emergency powers.
79-4-3.04.	Ultra Vires.

§ 79-4-3.01. Purposes.

(a) Every corporation incorporated under Sections 79-4-1.01 et seq. has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under Sections 79-4-1.01 et seq. only if permitted by, and subject to all limitations of the other statute.

SOURCES: Laws, 1987, ch. 486, § 301, eff from and after January 1, 1988.

Cross References — General powers of corporation, see § 79-4-3.02.

Applicability of this section to permissible corporate names, see § 79-4-4.01.

Purposes for which corporations may be organized under Mississippi Nonprofit Corporation Act, see § 79-11-149.

RESEARCH REFERENCES

ALR. Applicability of statutes regulating sale of assets or property of corporation as affected by purpose or character of corporation. 9 A.L.R.2d 1306.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 164 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:193 et seq.

CJS. 18 C.J.S., Corporations §§ 21 et seq.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-3.02. General powers.

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

(1) To sue and be sued, complain and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises or income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of (a) a corporation all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation, or (b) a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, or (c) a corporation all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(10) To conduct its business, locate offices and exercise the powers granted by Section 79-4-1.01 et seq. within or without this state;

(11) To elect directors and appoint officers, employees and agents of the corporation, define their duties, fix their compensation and lend them money and credit;

(12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents;

(13) To make donations for the public welfare or for charitable, scientific or educational purposes;

(14) To transact any lawful business that will aid governmental policy;

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

SOURCES: Laws, 1987, ch. 486, § 3.02; Laws, 1988, ch. 368, § 2; Laws, 1993, ch. 368, § 16, eff from and after July 1, 1993.

Cross References — Gifts and donations by corporations for public welfare or charitable or educational purposes to be changed to operation expenses, see § 79-1-3.

Lack of necessity that articles of incorporation set forth any corporate powers enumerated in §§ 79-4-1.01 et seq., see § 79-4-2.02.

Emergency powers of board of directors of corporation, see § 79-4-3.03.

Disposition of assets not requiring shareholder approval, see § 79-4-12.01.

Disposition of assets requiring shareholder approval, see § 79-4-12.02.

Dissolution of corporation generally, see § 79-4-14.01 et seq.

Corporation's exceeding or abusing authority conferred upon it by law as grounds for judicial dissolution of corporation, see § 79-4-14.30.

General powers of corporation under Mississippi Nonprofit Corporation Act, see § 79-11-151.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.

2.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

A. Former § 79-3-7.

11. Powers in general.
12. —Acquisition and ownership of land.
13. —Conveyances.
14. —Sale of personality.
15. —Sale of entire assets.
16. —Contracts.
17. —Increase or reduction of capital stock.
18. —Miscellaneous.
19. Corporate seal.
20. Ultra vires actions.
21. Authority of officers and agents.
22. Compensation of directors, officers and agents.
23. Estoppel.
24. Liability.
25. Assignment for benefit of creditors.
26. Preference of creditors.

B. Former § 79-3-285.

27. In general.

I. UNDER CURRENT LAW.

1. In general.

Just as a corporation's negligent performance of contractual duties does not justify the disregard of the corporate entity, neither does the fact that the principal shareholder oversees the day-to-day operation. *Gray v. Edgewater Landing, Inc.*, 541 So. 2d 1044 (Miss. 1989).

2.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

A. Former § 79-3-7.

11. Powers in general.

Corporation has power to sue in corporate name only insofar as state grants that power, and when corporation is suspended it loses all rights acquired by form of organization. Where suspension had been set aside by time amended complaint was filed, and company was thus authorized to resume all activities as though suspension had not been imposed, claim that it lacked power to file suit was not applicable. *Bryant Constr. Co. v. Cook Constr. Co.*, 518 So. 2d 625 (Miss. 1987).

Corporation cannot surrender franchise with freedom of individual. *Southern Elec. Sec. Co. v. State*, 91 Miss. 195, 44 So. 785, 124 Am. St. R. 638 (1907).

Corporation cannot delegate its duties to others with same freedom as individuals. *Southern Elec. Sec. Co. v. State*, 91 Miss. 195, 44 So. 785, 124 Am. St. R. 638 (1907).

A constitution adopted by a corporation is in effect a mere bylaw, that may be repealed or modified by resolutions subsequently adopted by the corporation. *Dornes v. Supreme Lodge, Knights of Pythias of The World*, 75 Miss. 466, 23 So. 191 (1898).

12. —Acquisition and ownership of land.

A corporation's right to acquire and hold land, whether in violation of a charter or the laws or public policy of the state, can

be questioned only by the state in which the land lies or the sovereignty from which the corporation received its charter. *Federal Land Bank v. Cooper*, 190 Miss. 490, 200 So. 729 (1941).

Reservation in a deed to an individual by the Federal Land Bank of one-half of the mineral interest in the land conveyed thereby, whether in violation of this section [Code 1942, § 5329] or not, could only be questioned by the state and not by the grantee in such deed or those claiming through him. *Federal Land Bank v. Cooper*, 190 Miss. 490, 200 So. 729 (1941).

Laws 1912, ch. 162, does not affect right of corporation to acquire land for other than agricultural purposes. *Middleton v. Georgetown Mercantile Co.*, 117 Miss. 134, 77 So. 956 (1918).

Grantor of land sold to corporation could not attack its title under this section [Code 1942, § 5329]. *Middleton v. Georgetown Mercantile Co.*, 117 Miss. 134, 77 So. 956 (1918).

Rule that corporation's power to own land in excess of the amount prescribed by its charter cannot be questioned collaterally does not apply where the corporation is seeking aid of the court to enable it to acquire land which it has no power to acquire and hold. *Southern Realty Co. v. Tchula Co-operative Stores*, 114 Miss. 309, 75 So. 121 (1917).

Corporation with power to acquire realty without limit as to value and quantity cannot be affected by this section [Code 1942, § 5329]. *Southern Realty Co. v. Tchula Co-operative Stores*, 114 Miss. 309, 75 So. 121 (1917).

Under Code 1880 and Laws 1882, p. 50, there is no public policy making a distinction between the rights of foreign and domestic corporations as to ownership of lands in this state; nor does comity authorize such a distinction. *Taylor v. Alliance Trust Co.*, 71 Miss. 694, 15 So. 121 (1894).

13. —Conveyances.

Corporation's warranty of its right to cut timber from 16th section land, or that it would obtain such right held not void. *Southern Plantations Co. v. Kennedy Heading Co.*, 104 Miss. 131, 61 So. 166 (1913).

Corporation's deed without seal will be enforced in equity. *Southern Plantations*

Co. v. Kennedy Heading Co., 104 Miss. 131, 61 So. 166 (1913).

Unsealed deed of corporation passes the equitable title. *Hines v. Imperial Naval Stores Co.*, 101 Miss. 802, 58 So. 650 (1912).

Unsealed deed by corporation held not available in ejectment to support plaintiff's title. *Littelle v. Creek Lumber Co.*, 99 Miss. 241, 54 So. 841 (1911).

A conveyance of the land of an incorporated bank executed by its officers, where the purchase money is paid, passes the equitable title without the use of a corporate seal; whether the complete legal title passes by such a conveyance is not decided. *McIver v. Abernathy*, 66 Miss. 79, 5 So. 519 (1889).

14. —Sale of personal property.

In making a sale of its personal property a private corporation may act without seal; agency for the corporation in this case may be proved, and authority to act for it implied, as in the case of natural persons. *Cary-Halidy Lumber Co. v. Cain*, 70 Miss. 628, 13 So. 239 (1893).

15. —Sale of entire assets.

Corporation cannot give away its own assets to the prejudice of creditors, nor can it defeat creditors of another corporation by purchasing its assets unless it is a bona fide purchaser for value, in which case it is still liable for debts of selling corporation to the extent of assets received. *Mahaffey Co. v. Russell & Butler*, 100 Miss. 122, 54 So. 807 (1911), error overruled, 100 Miss. 126, 54 So. 945 (1911).

A private corporation doing an unprofitable business may sell its entire assets upon a vote of the majority of its stockholders even in the absence of an express enabling statute. *Hinds County v. Natchez, J. & C.R. Co.*, 85 Miss. 599, 38 So. 189, 107 Am. St. R. 305 (1905).

With an express enabling statute, the majority of the stockholders of an insolvent public corporation may sell all of its assets. *Hinds County v. Natchez, J. & C.R. Co.*, 85 Miss. 599, 38 So. 189, 107 Am. St. R. 305 (1905).

A stockholder in a corporation is bound by the act of a majority where due notice of a stockholders' meeting was given him,

although he was absent and unrepresented at the meeting. *Hinds County v. Natchez, J. & C.R. Co.*, 85 Miss. 599, 38 So. 189, 107 Am. St. R. 305 (1905).

16. —Contracts.

A corporation is not liable on contracts made by its promoters unless it adopts the same or receives their benefits. *Bank of Forest v. Orgill Bros. & Co.*, 82 Miss. 81, 34 So. 325 (1903).

The execution of a written contract by a corporation, apparently signed by its proper officers, need not be proved in a suit upon such contract unless such execution be denied on oath. *Wanita Woolen Mills v. Rollins*, 75 Miss. 253, 22 So. 819 (1897).

17. —Increase or reduction of capital stock.

Bank with authorized capital stock of \$35,000 may by a majority vote of the stockholders, as provided for amendments, reduce its capital stock to \$25,000. *Perry v. Bank of Commerce*, 116 Miss. 838, 77 So. 812 (1918).

Such a reduction could do no injustice to a minority stockholder where he was to receive new stock equal in value to his old stock. *Perry v. Bank of Commerce*, 116 Miss. 838, 77 So. 812 (1918).

Such reduction will not release liability of certain officers and stockholders, to the stockholders, for assets squandered by them. *Perry v. Bank of Commerce*, 116 Miss. 838, 77 So. 812 (1918).

18. —Miscellaneous.

Execution or endorsement of accommodation paper for the benefit of third persons is not within the authority of a corporation in the absence of special authorization so to do. *Ketcham v. Mississippi Outdoor Displays, Inc.*, 203 Miss. 52, 33 So. 2d 300 (1948).

Corporation with authority to operate mercantile business, borrow money, and receive and execute security therefor, can endorse a note. *Gullege v. Woods*, 108 Miss. 233, 66 So. 536 (1914).

Stock of domestic corporation held by foreign corporation cannot be voted except in this state. *Southern Elec. Sec. Co. v. State*, 91 Miss. 195, 44 So. 785, 124 Am. St. R. 638 (1907).

Where a warehouse company had no power to construct and maintain conduits across the street of a city and had contracted to furnish a railroad company with water through conduits, a subsequent agreement by which the railroad company having such power undertook to construct them is not an illegal evasion of the police power of the city. *Mayor of Canton v. Canton Cotton Whse. Co.*, 84 Miss. 268, 36 So. 266, 105 Am. St. R. 428 (1904).

The legislature may divest a municipality of control over its streets and authorize their use by a corporation without compensating the municipality. *Mayor of Canton v. Canton Cotton Whse. Co.*, 84 Miss. 268, 36 So. 266, 105 Am. St. R. 428 (1904).

A bona fide loan of money, jointly by a director and another to an insolvent corporation may be secured by a mortgage on the property of the corporation. *Millsaps v. Chapman*, 76 Miss. 942, 26 So. 369, 71 Am. St. R. 547 (1899).

19. Corporate seal.

Corporation's warranty of its right to cut timber from 16th section land, or that it would obtain such right held not void. *Southern Plantations Co. v. Kennedy Heading Co.*, 104 Miss. 131, 61 So. 166 (1913).

Unsealed deed of corporation passes the equitable title. *Hines v. Imperial Naval Stores Co.*, 101 Miss. 802, 58 So. 650 (1912).

Unsealed deed by corporation held not available in ejectment to support plaintiff's title. *Littelle v. Creek Lumber Co.*, 99 Miss. 241, 54 So. 841 (1911).

The written appointment of a substituted trustee in a deed of trust executed by a corporation, the beneficiary in the deed, need not be under seal. *Brown v. British Am. Mtg. Co.*, 86 Miss. 388, 38 So. 312 (1905).

20. Ultra vires actions.

Law will not allow defense of ultra vires to defeat the ends of justice. *National Sur. Co. v. Hall-Miller Decorating Co.*, 104 Miss. 626, 61 So. 700 (1913).

Corporation purchasing interest in another corporation from an individual cannot defeat payment of price by setting up that the transaction was ultra vires where

it retains the property bought. *Watts Mercantile Co. v. Buchanan*, 92 Miss. 540, 46 So. 66 (1908).

Where a corporation having authority to do so sells its franchise to another corporation, the stockholders of the seller cannot avoid the sale for want of power in the purchaser to buy. *Hinds County v. Natchez, J. & C.R. Co.*, 85 Miss. 599, 38 So. 189, 107 Am. St. R. 305 (1905).

21. Authority of officers and agents.

Agency and authority to act for corporation may be implied as in case of natural persons. *Metzger v. Southern Bank*, 98 Miss. 108, 54 So. 241 (1910); *Brown v. British Am. Mtg. Co.*, 86 Miss. 388, 38 So. 312 (1905); *Cary-Halidy Lumber Co. v. Cain*, 70 Miss. 628, 13 So. 239 (1893).

Corporation through acquiescence held estopped to claim it did not execute agreement signed by its president in his individual name, giving railroad license for a spur track over its land. *Belzoni Oil Co. v. Yazoo & Miss. V. Ry. Co.*, 94 Miss. 58, 47 So. 468 (1908).

Corporation receiving proceeds of purchase of property cannot defeat payment of note for price on ground that general manager had no authority to execute it. *Watts Mercantile Co. v. Buchanan*, 92 Miss. 540, 46 So. 66 (1908).

Agency for the corporation in the case of a sale of its personal property without seal may be proved, and authority to act for it may be implied, as in the case of natural persons. *Cary-Halidy Lumber Co. v. Cain*, 70 Miss. 628, 13 So. 239 (1893).

22. Compensation of directors, officers and agents.

A resolution by the board of directors fixing the president's salary, which resolution was passed when the president cast the deciding vote in his own favor, was voidable at the suit of minority stockholders who established that the salary was clearly excessive and wasteful as against them. *Landstreet v. Meyer*, 201 Miss. 826, 29 So. 2d 653 (1947).

Corporate salary awards may not, over the objections of minority stockholders, be based on services already rendered and concluded. *Landstreet v. Meyer*, 201 Miss. 826, 29 So. 2d 653 (1947).

A director is not entitled to compensation for services rendered as secretary to the promoters prior to the organization of the corporation, in the absence of any understanding looking to any such compensation. *West Point Tel. & Tel. Co. v. Rose*, 76 Miss. 61, 23 So. 629 (1898).

23. Estoppel.

Corporation's estoppel in pais with respect to act of agent is governed by same principles as individuals. *Metzger v. Southern Bank*, 98 Miss. 108, 54 So. 241 (1910).

Corporation through acquiescence held estopped to claim it did not execute agreement signed by its president in his individual name, giving railroad license for a spur track over its land. *Belzoni Oil Co. v. Yazoo & Miss. V. Ry. Co.*, 94 Miss. 58, 47 So. 468 (1908).

24. Liability.

A corporation executing through one of its officers an accommodation note is not liable when so to do is beyond the scope of its corporate authority. *Ketcham v. Mississippi Outdoor Displays, Inc.*, 203 Miss. 52, 33 So. 2d 300 (1948).

Where defendant purchased lumber from corporation through S and gave him a check therefor, endorsement and collection of the check by S for the corporation constituted valid payment, though S afterwards misappropriated the proceeds. *Perry v. Sumrall Lumber Co.*, 95 Miss. 691, 49 So. 263 (1909).

Corporation held liable for slander of agent within scope of his employment, though without knowledge, approval, or ratification thereof. *Rivers v. Yazoo & Miss. V. Ry.*, 90 Miss. 196, 43 So. 471 (1907).

A corporation is not liable on contracts made by its promoters unless it adopts the same or received their benefits. *Bank of Forest v. Orgill Bros. & Co.*, 82 Miss. 81, 34 So. 325 (1903).

A private corporation, through its officers or agents, may incur liability for a reward offered for the arrest of persons unlawfully interfering with its property or business. *Norwood & Butterfield Co. v. Andrews*, 71 Miss. 641, 16 So. 262 (1894).

25. Assignment for benefit of creditors.

Where there was an immediate necessity for the execution by a corporation of an assignment for the benefit of its creditors and it executed such an instrument, acting through a quorum of its board of directors in pursuance of directions of stockholders given at a meeting in which a majority of stock and stockholders were represented, the same is not void or voidable at the suit of creditors (none of the stockholders objecting thereto) because proper notice was not given of the meeting. *State Nat'l Bank v. Duncan*, 83 Miss. 610, 35 So. 569 (1904).

26. Preference of creditors.

An insolvent corporation which has ceased to be a going concern, and has no prospects of resuming business, cannot legally prefer a debt due to one of its directors, its secretary and its treasurer. *King v. Wooldridge*, 78 Miss. 179, 28 So. 824 (1900).

An insolvent corporation may in good faith prefer a creditor. *Ferguson v. Oxford Mercantile Co.*, 78 Miss. 65, 27 So. 877 (1900).

An insolvent corporation may, in good faith, prefer creditors, but the directors of

such a corporation cannot, by their own votes and acts, prefer themselves. *Love Mfg. Co. v. Queen City Mfg. Co.*, 74 Miss. 290, 20 So. 146 (1896).

B. Former § 79-3-285.

27. In general.

The wife of the deceased owner of a corporation was not personally liable for its business debts under § 79-3-285 since there was no proof that she exercised control and management over the corporation, even though she was one of the corporation's original directors, regularly received funds from the corporate account for her personal and household expenses, and performed services for the corporation. *Flanagan v. Jackson Whsle. Bldg. Supply Co.*, 461 So. 2d 761 (Miss. 1984).

The owner and operator of an incorporated sole proprietorship was personally liable, under § 79-3-285, for corporate debts to a creditor who dealt with the corporation as a sole proprietorship which were incurred while the corporation was suspended from doing business, pursuant to § 79-3-189, for failing to file an annual report. *Carolina Transformer Co. v. Anderson*, 341 So. 2d 1327 (Miss. 1977).

RESEARCH REFERENCES

ALR. Power of president of corporation to have litigation instituted by it where board of directors has failed or refused to grant permission. 10 A.L.R.2d 701.

Estoppel of stockholder to recover back or to secure restoration of compensation of corporate officers claimed to be exorbitant or unauthorized. 16 A.L.R.2d 467.

Acts of employee, in procuring warrant or aiding prosecution, as within scope of employment so as to render employer liable for malicious prosecution. 18 A.L.R.2d 402.

Power of corporation or its officers with respect to payment of remuneration, bonus, and the like, to widow or family of deceased officer. 29 A.L.R.2d 1262.

Power of particular officer or agent of business corporation to bind it by a donation to a charity or similar institution. 50 A.L.R.2d 447.

Expenses incurred by competing factions within corporation in soliciting proxies as charge against corporation. 51 A.L.R.2d 873.

Corporation's power to enter into partnership or joint venture. 60 A.L.R.2d 917.

Authority of corporate officers to mortgage or pledge corporate personal property. 62 A.L.R.2d 712.

Statute denying defense of usury to corporation. 63 A.L.R.2d 924.

Practice by attorneys and physicians as corporate entities or associations under professional service corporation statutes. 4 A.L.R.3d 383.

Duty and liability of closely held corporation, its directors, officers, or majority stockholders, in acquiring stock of minority shareholder. 7 A.L.R.3d 500.

Discovery and inspection: compelling party to disclose information in hands of

affiliated or subsidiary corporation, or independent contractor, not made party to suit. 19 A.L.R.3d 1134.

Communications by corporation as privileged in stockholders' action. 34 A.L.R.3d 1106.

Right of corporation to indemnity for civil or criminal liability incurred by employee's violation of antitrust laws. 37 A.L.R.3d 1355.

Fire insurance on corporate property as affected by its intentional destruction by a corporate officer, employee, or stockholder. 37 A.L.R.3d 1385.

Criminal liability of corporation for extortion, false pretenses or similar offenses. 49 A.L.R.3d 820.

Similarity of ownership or control as basis for charging corporation acquiring assets of another with liability for former owner's debts. 49 A.L.R.3d 881.

Corporation: validity of charter provision for non-voting common stock. 52 A.L.R.3d 1131.

Criminal liability of corporation for bribery or conspiracy to bribe public official. 52 A.L.R.3d 1274.

What constitutes waiver of stockholder's or corporation's right to enforce first-option stock purchase agreement. 55 A.L.R.3d 723.

Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Construction and operation of statute restricting corporation's right to purchase

its own stock to purchase from surplus. 61 A.L.R.3d 1049.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

Corporation's criminal liability for homicide. 45 A.L.R.4th 1021.

Application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute as affected by compliance after commencement of action. 23 A.L.R.5th 744.

Am Jur. 18 Am. Jur. 2d, Corporations § 75.

18B Am. Jur. 2d, Corporations §§ 1715 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:561 et seq., 74:1046.2 (board of directors — provision for corporate seal).

6A Am. Jur. Legal Forms 2d, Corporations § 74:2337 (sale of assets — assumption of obligations relative to pensions and termination payment plans).

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 43.1 (complaint, petition, or declaration — to collect on corporate debt — corporation the alter ego of individual).

CJS. 19 C.J.S., Corporations §§ 1018 et seq.

Law Reviews. 1984 Mississippi Supreme Court Review: Corporate, Contract and Commercial Law. 55 Miss. L. J. 65, March, 1985.

§ 79-4-3.03. Emergency powers.

(a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of

rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

SOURCES: Laws, 1987, ch. 486, § 3.03; Laws, 1988, ch. 368, § 3, eff from and after passage (approved April 18, 1988).

Cross References — Emergency bylaws, see § 79-4-2.07.

Corporation's exceeding or abusing authority conferred upon it by law as grounds for judicial dissolution of corporation, see § 79-4-14.30.

§ 79-4-3.04. Ultra Vires.

(a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a shareholder against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively or through a receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the corporation; or

(3) In a proceeding by the Attorney General under Section 79-4-14.30.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

SOURCES: Laws, 1987, ch. 486, § 3.04, eff from and after January 1, 1988.

Cross References — Corporation's exceeding or abusing authority conferred upon it by law as grounds for judicial dissolution of corporation, see § 79-4-14.30.

Challenge to corporation's power to act under Mississippi Nonprofit Corporation Act, see § 79-11-155.

JUDICIAL DECISIONS

I. Under Current Law.

II. Under Former § 79-3-11.

1.-10. [Reserved for future use.]

11. In general.

I. Under Current Law.**1.-10. [Reserved for future use.]****II. Under Former § 79-3-11.****11. In general.**

Defense of ultra vires raised by one party to contract against other party is prohibited by statute. *Bryant Constr. Co. v. Cook Constr. Co.*, 518 So. 2d 625 (Miss. 1987).

The law looks with disfavor upon the defense of ultra vires, and holds that the doctrine should not be allowed to prevail where it would defeat the ends of justice, or work a legal wrong. *Pendleton v. Williams*, 198 So. 2d 235 (Miss. 1967).

A corporation which accepts the benefits of a contract may not assert a defense of ultra vires in an action by the other party.

Pendleton v. Williams, 198 So. 2d 235 (Miss. 1967).

The defense of ultra vires cannot prevail against the doctrine of equitable estoppel where action was brought by receivers of an educational corporation seeking a recovery in connection with a completely executed purchase of stock. *Pendleton v. Williams*, 198 So. 2d 235 (Miss. 1967).

The principle that a stranger to the transaction, whose rights have not been invaded, may not collaterally attack the legality of action taken at a stockholders' meeting on grounds of informality or irregularity in the meeting would seem to have been recognized by the legislature in the enactment of this section [Code 1942, § 5309-06]. *North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n*, 250 Miss. 463, 166 So. 2d 119 (1964).

RESEARCH REFERENCES

ALR. Power of president of corporation to have litigation instituted by it where board of directors has failed or refused to grant permission. 10 A.L.R.2d 701.

Estoppel of stockholder to recover back or to secure restoration of compensation of corporate officers claimed to be exorbitant or unauthorized. 16 A.L.R.2d 467.

Acts of employee in procuring warrant or aiding prosecution, as within scope of employment so as to render employer liable for malicious prosecution. 18 A.L.R.2d 402.

Power of corporation or its officers with respect to payment of remuneration, bonus, and the like, to widow or family of deceased father. 29 A.L.R.2d 1262.

Validity of security for contemporaneous loan to corporation by officer, director, or stockholder. 31 A.L.R.2d 663.

Power of particular officer or agent of business corporation to bind it by a donation to a charity or similar institution. 50 A.L.R.2d 447.

Expenses incurred by competing factions within corporation in soliciting proxies as charged against corporation. 51 A.L.R.2d 873.

Authority of president to subordinate corporation's claim, assignment, lien, or the like. 53 A.L.R.2d 1421.

Corporation's power to enter into partnership or joint venture. 60 A.L.R.2d 917.

Authority of corporate officers to mortgage or pledge corporate personal property. 62 A.L.R.2d 712.

Duty and liability of closely held corporation, its directors, officers, or majority stockholders, in acquiring stock of minority shareholder. 7 A.L.R.3d 500.

Liability of corporate directors or negligence in permitting mismanagement or defalcations by officers or employees. 25 A.L.R.3d 941.

Communications by corporation as privileged in stockholders' action. 34 A.L.R.3d 1106.

Liability of corporate officer or director for commission or compensation received from third person in connection with that person's transaction with corporation. 47 A.L.R.3d 373.

Right of member, officer, agent, or director of private corporation or unincorporated association to assert personal privilege against self-incrimination with respect to production of corporate books or records. 52 A.L.R.3d 636.

Test in stockholders' actions as to reasonableness of compensation of corporate officers who as directors determine own compensation. 53 A.L.R.3d 358.

Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Availability of sole shareholder's Fifth Amendment privilege against self-incrimination to resist production of corporation's books and records-modern status. 87 A.L.R. Fed. 177.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1732 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 30, 31, 161 et seq. (stockholders' derivative actions).

CJS. 19 C.J.S., Corporations §§ 965 et seq.

ARTICLE 4.

NAME.

SEC.

- 79-4-4.01. Corporate name.
- 79-4-4.02. Reserved name.
- 79-4-4.03. Registered name.

§ 79-4-4.01. Corporate name.

(a) A corporate name:

(1) Must contain the word "corporation," "incorporated," "company" or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd." or words or abbreviations of like import in another language; and

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 79-4-3.01 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under Section 79-4-4.02 or 79-4-4.03;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b). The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other

corporation is incorporated or authorized to transact business in this state and the proposed user corporation;

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) Sections 79-4-1.01 et seq. do not control the use of fictitious names.

SOURCES: Laws, 1987, ch. 486, § 4.01, eff from and after January 1, 1988.

Cross References — Applicability of this section to mandatory provisions of articles of incorporation, see § 79-4-2.02.

Applicability of this section to registration of foreign corporation's corporate name, see § 79-4-4.03.

Board of directors authorized to adopt amendment to articles of incorporation to make certain changes to corporate name without share-holder approval, ss § 79-4-10.05.

Effect of an amendment to articles of incorporation changing corporation's name on proceeding brought by or against the corporation in its former name, see § 79-4-10.09.

Requirement that name of corporation applying for reinstatement after being administratively dissolved satisfy requirements of this section, see § 79-4-14.22.

Requirement that any change of name of foreign corporation authorized to transact business satisfy requirements of this section to maintain its certificate of authority, see § 79-4-15.06.

Requirements for foreign corporation to obtain certificate of authority to transact business when its corporate name does not satisfy requirements of this section, see § 79-4-15.06.

Application by foreign corporation for reinstatement of certificate of authority, see § 79-4-15.32.

Mississippi Nonprofit Corporation Act, see §§ 79-11-101 et seq.

Corporate name under Mississippi Nonprofit Corporation Act, see § 79-11-157.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-13.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-13.

11. In general.

This section [Code 1942, § 5322] affords to corporation protection of its corporate name as soon as corporation comes into existence and this protection continues as long as corporation continues; and relief from encroachment may be had without necessity of showing actual use of name in

business. *Meridian Yellow Cab Co. v. City Yellow Cabs*, 206 Miss. 812, 41 So. 2d 14 (1949).

In granting corporate charter, state does not thereby adjudicate legal right of corporation to unlimited use of name chosen; and name, though derived through authority of state, may not be used in manner which will result in fraud or deception. *Meridian Yellow Cab Co. v. City Yellow Cabs*, 206 Miss. 812, 41 So. 2d 14 (1949).

Parties organizing corporation must choose name at its peril, and use of name similar to one adopted by another corporation, if misleading and calculated to injure it in exercise of its corporate functions, regardless of intent, may be prevented by corporation having prior right, by suit for injunction against new corpo-

ration to prevent use of name. *Meridian Yellow Cab Co. v. City Yellow Cabs*, 206 Miss. 812, 41 So. 2d 14 (1949).

Creation of cab corporation under name "City Yellow Cabs" for operation of cabs in city in which another corporation had previously been created for operation of cabs under name of "Meridian Yellow Cab Com-

pany, Inc." transgresses this section [Code 1942, § 5322] to extent that City Yellow Cabs may not lawfully operate under its misleading name in city and its environs in manner to confuse public, names being so similar as to be misleading. *Meridian Yellow Cab Co. v. City Yellow Cabs*, 206 Miss. 812, 41 So. 2d 14 (1949).

RESEARCH REFERENCES

ALR. Construction and effect of statutes as doing business under an assumed or fictitious name or designation not showing the names of the persons interested. 42 A.L.R.2d 516.

Right to protection of corporate name, as between domestic corporation and foreign corporation not qualified to do business in state. 26 A.L.R.3d 994.

Incorporation of company under particular name as creating exclusive right to such name. 68 A.L.R.3d 1168.

Use of "family name" by corporation as unfair competition. 72 A.L.R.3d 8.

Validity and application of statute prohibiting use of name descriptive of engi-

neering by business organization not practicing profession of engineering. 13 A.L.R.4th 676.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 228 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:104 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 4.

CJS. 18 C.J.S., Corporations §§ 223 et seq.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-4.02. Reserved name.

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable 180-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

SOURCES: Laws, 1987, ch. 486, § 4.02, eff from and after January 1, 1988.

Cross References — Fee for filing application for reserved name, see § 79-4-1.22.

Requirement that corporate name be distinguishable from corporate name reserved or registered under this section, see § 79-4-4.01.

Requirement that corporate name of foreign corporation must be distinguishable from corporate name reserved under this section, see § 79-4-15.06.

Restrictions on corporate names, see § 79-11-157.

Reserving exclusive use of corporate name under Mississippi Nonprofit Corporation Act, see § 79-11-159.

RESEARCH REFERENCES

ALR. Incorporation of company under particular name as creating exclusive right to such name. 68 A.L.R.3d 1168.

Use of "family name" by corporation as unfair competition. 72 A.L.R.3d 8.

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations §§ 74:104-74:107.

§ 79-4-4.03. Registered name.

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by Section 79-4-15.06, if the name is distinguishable upon the records of the Secretary of State from the corporate names that are not available under Section 79-4-4.01(b)(3).

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by Section 79-4-15.06, by delivering to the Secretary of State for filing an application:

(1) Setting forth its corporate name, or its corporate name with any addition required by Section 79-4-15.06, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under Sections 79-4-1.01 et seq. or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

SOURCES: Laws, 1987, ch. 486, § 4.03, eff from and after January 1, 1988.

Cross References — Fee for filing application for reserved name, see § 79-4-1.22.

Requirement that corporate name be distinguishable from corporate name reserved or registered under this section, see § 79-4-4.01.

Requirement that corporate name of foreign corporation must be distinguishable from corporate name registered under this section, see § 79-4-15.06.

Restrictions on corporate names, see § 79-11-157.

Registration of foreign corporation's corporate name under Mississippi Nonprofit Corporation Act, see § 79-11-161.

RESEARCH REFERENCES

ALR. Incorporation of company under particular name as creating exclusive right to such name. 68 A.L.R.3d 1168.

Use of "family name" by corporation as unfair competition. 72 A.L.R.3d 8.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 241 et seq.

2 Am. Jur. Trials 409, Locating Public Records.

CJS. 18 C.J.S., Corporations §§ 223 et seq.

ARTICLE 5.

OFFICE AND AGENT.

SEC.

- 79-4-5.01. Registered office and registered agent.
- 79-4-5.02. Change of registered office or registered agent.
- 79-4-5.03. Resignation of registered agent.
- 79-4-5.04. Service on corporation.

§ 79-4-5.01. Registered office and registered agent.

Each corporation must continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

SOURCES: Laws, 1987, ch. 486, § 5.01, eff from and after January 1, 1988.

Cross References — Failure of corporation to have registered agent or registered office in this state as ground for administrative dissolution, see § 79-4-14.20.

Authority of registered agent not terminated by administrative dissolution of corporation, see § 79-4-14.21.

Requirement that corporation maintain registered office and registered agent under Mississippi Nonprofit Corporation Act, see § 79-11-163.

JUDICIAL DECISIONS

I. Under Current Law.

- 1. In general.
- 2.-10. [Reserved for future use.]

II. Under Former § 79-3-21.

- 11. In general.

I. Under Current Law.

1. In general.

Agents appointed under Miss. Code Ann. § 79-4-5.01 are agents in fact, rather than statutory agents, because the party appointing the agent can choose the iden-

tity of the agent. *Burton v. Cont'l Cas. Co.*, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 79299 (S.D. Miss. Oct. 30, 2006).

2.-10. [Reserved for future use.]

II. Under Former § 79-3-21.

11. In general.

The circuit court of Coahoma County had jurisdiction of an action to recover damages for personal injuries sustained in an accident occurring in Tennessee, brought by a Tennessee resident against a Tennessee corporation which had qualified to do business in Mississippi, and had appointed a resident agent for the service of process, and service had been had on

said agent. *S & W Constr. Co. v. Douglas*, 244 Miss. 498, 142 So. 2d 33 (1962).

Domestic corporation is required to maintain office in county of its domicile. *Natchez Coca-Cola Bottling Co. v. Watson*, 160 Miss. 173, 133 So. 677 (1931).

Domestic corporation must maintain office in county of domicile in charge of officers or designated agent for service of process. *Natchez Coca-Cola Bottling Co. v. Watson*, 160 Miss. 173, 133 So. 677 (1931).

When office of domestic corporation in county of domicile is in charge of the officers, it need not designate resident agent for service of process. *Natchez Coca-Cola Bottling Co. v. Watson*, 160 Miss. 173, 133 So. 677 (1931).

RESEARCH REFERENCES

ALR. Who is “general” or “managing” agent of foreign corporation under statute authorizing service of process on such agent. 17 A.L.R.3d 625.

Am Jur. 18A Am. Jur. 2d, Corporations § 257.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1301-74:1306.

2 Am. Jur. Trials 409, Locating Public Records.

CJS. 18 C.J.S., Corporations § 242.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-5.02. Change of registered office or registered agent.

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of the new registered office;
- (4) The name of its current registered agent;
- (5) If the current registered agent is to be changed, the name of the new registered agent and the new agent’s written consent (either on the statement or attached to it) to the appointment; and
- (6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements

of subsection (a) and recites that the corporation has been notified of the change.

SOURCES: Laws, 1987, ch. 486, § 5.02, eff from and after January 1, 1988.

Cross References — Fees for filing statement of change of registered agent or registered office or both and for filing agent's statement of change of registered office, see § 79-4-122.

Failure of corporation to inform Secretary of State of change of registered agent or registered office, that its registered agent has resigned, or that its registered office has been discontinued, as ground for administrative dissolution, see § 79-4-14.20.

Change of registered name under Mississippi Nonprofit Corporation Act, see § 79-11-165.

RESEARCH REFERENCES

ALR. Who is "general" or "managing" agent of foreign corporation under statute authorizing service of process on such agent. 17 A.L.R.3d 625.

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations § 74:1305.

§ 79-4-5.03. Resignation of registered agent.

(a) A registered agent may resign his agency appointment by signing and delivering to the Secretary of State for filing the signed original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) After filing the statement the Secretary of State shall mail one (1) copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

SOURCES: Laws, 1987, ch. 486, § 5.03, eff from and after January 1, 1988.

Cross References — Requirement that Secretary of State deliver filed documents to corporation or representative after filing, see § 79-4-1.25.

Failure of corporation to inform Secretary of State of change of registered agent or registered office, that its registered agent has resigned, or that its registered office has been discontinued, as ground for administrative dissolution, see § 79-4-14.20.

Resignation of registered agent under Mississippi Nonprofit Corporation Act, see § 79-11-167

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1304-74:1306, 74:1341.

CJS. 19 C.J.S., Corporations § 815.

§ 79-4-5.04. Service on corporation.

(a) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.

(b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

SOURCES: Laws, 1987, ch. 486, § 5.04, eff from and after January 1, 1988.

Cross References — Requirement that Secretary of State give written notice in accordance with this section to corporation of administrative dissolution of corporation, see § 79-4-14.21.

Requirement that Secretary of State give notice in accordance with this section to corporation of reinstatement of corporation after administrative dissolution, see § 79-4-14.22.

Requirement that Secretary of State give notice in accordance with this section to corporation of denial of application for reinstatement, see § 79-4-14.23.

Application by foreign corporation for reinstatement of certificate of authority, see § 79-4-15.32.

Service on corporation under Mississippi Nonprofit Corporation Act, see § 79-11-169.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-25.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-25.

11. In general.

This section [Code 1942, § 5319] is applicable only to corporations doing intra-state business. *Morrison v. Guaranty Mtg. & Trust Co.*, 191 Miss. 207, 199 So. 110 (1940).

Charter grant of right to stockholders of corporation to change domicile thereof held not violation of statutes or constitution nor inimical to public policy or private right in view of statute authorizing service on secretary of state of process against corporations failing to file names of agents on whom process may be served. *Estes v. Bank of Walnut Grove*, 172 Miss. 499, 159 So. 104 (1935).

Domestic corporation may be sued on transitory cause of action in county where cause of action accrued, by service of process on officer or agent in charge of office in county of domicile. *Natchez Coca-Cola Bottling Co. v. Watson*, 160 Miss. 173, 133 So. 677 (1931).

Domestic corporation cannot escape liability to suit on transitory cause of action in county where cause of action accrued by failing to designate resident agent for ser-

vice of process. *Natchez Coca-Cola Bottling Co. v. Watson*, 160 Miss. 173, 133 So. 677 (1931).

RESEARCH REFERENCES

ALR. Setting aside default judgment for failure of statutory agent on whom process was served to notify defendant. 20 A.L.R.2d 1179.

Who is "managing agent" of domestic corporation within statute providing for service of summons or process thereon. 71 A.L.R.2d 178.

Service of process on dissolved domestic corporation in absence of express statutory direction. 75 A.L.R.2d 1399.

Who is "general" or "managing" agent of foreign corporation under statute authorizing service of process on such agent. 17 A.L.R.3d 625.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 1897-1899, 1901 et seq.

CJS. 19 C.J.S., Corporations, §§ 1305 et seq.

ARTICLE 6.

SHARES AND DISTRIBUTIONS.

Subarticle A.	Shares.....	79-4-6.01
Subarticle B.	Issuance of Shares.....	79-4-6.20
Subarticle C.	Subsequent Acquisition of Shares by Shareholders and Corporation.....	79-4-6.30
Subarticle D.	Distributions.....	79-4-6.40

SUBARTICLE A.

SHARES.

SEC.

79-4-6.01.	Authorized shares.
79-4-6.02.	Terms of class or series determined by board of directors.
79-4-6.03.	Issued and outstanding shares.
79-4-6.04.	Fractional shares.

§ 79-4-6.01. Authorized shares.

(a) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one (1) class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights and limitations that are identical with those of other shares of the same class or series.

(b) The articles of incorporation must authorize:

(1) One or more classes or series of shares that together have unlimited voting rights, and

(2) One or more classes or series of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes or series of shares that:

(1) Have special, conditional or limited voting rights, or no right to vote, except to the extent otherwise provided by Section 79-4-1.01 et seq.;

(2) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder or another person or upon the occurrence of a specified event; (ii) for cash, indebtedness, securities or other property; and (iii) at prices and in amounts specified or determined in accordance with a formula;

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative; or

(4) Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

(d) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with Section 79-4-1.20(k).

(e) Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

(f) The description of the preferences, rights and limitations of classes or series of shares in subsection (c) is not exhaustive.

SOURCES: Laws, 1987, ch. 486, § 6.01; Laws, 1988, ch. 368, § 4; Laws, 2001, ch. 435, § 1; Laws, 2004, ch. 495, § 4, eff from and after July 1, 2004.

Cross References — Applicability of this section to mandatory provisions of articles of incorporation, see § 79-4-2.02.

Authority of board of directors to determine preferences, limitations and relative rights of classes of shares, see § 79-4-6.02.

Fractional shares, see § 79-4-6.04.

Share dividends, see § 79-4-6.23.

Shareholder's right to appraisal, see § 79-4-13.02.

Voluntary dissolution of corporation after issuance of shares, see § 79-4-14.02.

JUDICIAL DECISIONS

I. Under Current Law.

II. Under Former § 79-3-111.

1.-10. [Reserved for future use.]

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-111.

11. In general.

Incorporators who, following the issuance of a certificate of incorporation but prior to the payment into the treasury of the corporation of the required \$1,000 as consideration for the issuance of shares,

executed, as officers of the corporation, its note for \$25,000, were not individually on the corporation's note. *Payment v. Hardin*, 218 So. 2d 889 (Miss. 1969).

A deed to a corporation after its organization meeting is valid notwithstanding at the time the amount of capital stock required by this section [Code 1942, § 5311] had not been paid up. *Allen v. Thompson*, 248 Miss. 544, 158 So. 2d 503 (1963).

RESEARCH REFERENCES

ALR. Construction and application of provisions of articles, bylaws, statutes, or agreements restricting alienation or transfer of corporate stock. 2 A.L.R.2d 745.

Statutory requirements respecting issuance of corporate stock as applicable to foreign corporations. 8 A.L.R.2d 1185.

Delay of stockholders in exercising their right to convert their stock into other class of stock or corporate obligations. 10 A.L.R.2d 587.

Enforcement of stock subscription after suit on note of subscriber is barred by statute of limitations. 11 A.L.R.2d 1380.

Validity of stock option plan under which selected personnel of corporation may acquire stock interest therein. 34 A.L.R.2d 852.

Validity of restrictions on alienation of corporate stock. 61 A.L.R.2d 1318.

Right or duty of corporation to refuse to transfer stock on presentation of properly indorsed certificate, because of conflicting rights or claims of one other than transferee. 75 A.L.R.2d 746.

Construction and effect of constitutional or statutory provisions precluding issuance of corporate stock in consideration of promissory notes. 78 A.L.R.2d 834.

Failure to issue stock as factor in disregard of corporate entity. 8 A.L.R.3d 1122.

Corporation's delivery of stock certificate to stockholder as prerequisite of its issuance to him. 16 A.L.R.3d 1015.

Change in stock or corporate structure, or split or substitution of stock of corporation, as affecting bequest of stock. 46 A.L.R.3d 7.

Corporation: validity of charter provision for non-voting common stock. 52 A.L.R.3d 1131.

Validity and construction of provision restricting transfer of corporate stock, which conditions transfer upon consent of one other than shareholder, officer, or director of corporation. 53 A.L.R.3d 1272.

Valuation of corporate stock for purposes of state gift, inheritance or estate tax, as affected by predetermined price in buy-out or first option agreement among stockholders or with corporation. 58 A.L.R.3d 1104.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 355 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:641 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 61 et seq.

CJS. 18 C.J.S., Corporations §§ 254 et seq.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-6.02. Terms of class or series determined by board of directors.

(a) If the articles of incorporation so provide, the board of directors is authorized without shareholder approval, to:

(1) Classify any unissued shares into one or more classes or into one or more series within a class;

(2) Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(3) Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

(b) If the board of directors acts pursuant to subsection (a), it must determine the terms, including the preferences, rights and limitations, to the same extent permitted under Section 79-4-6.01 of:

(1) Any class of shares before the issuance of any shares of that class, or

(2) Any series within a class before the issuance of any shares of that series.

(c) Before issuing any shares of a class or series created under this section, the corporation must deliver to the Secretary of State for filing articles of amendment setting forth the terms determined under subsection (a).

SOURCES: Laws, 1987, ch. 486, § 6.02; Laws, 2001, ch. 435, § 2; Laws, 2004, ch. 495, § 5, eff from and after July 1, 2004.

Cross References — Restrictions on board's authority to determine preferences, limitations and relative rights of classes of shares, see § 79-4-6.01.

RESEARCH REFERENCES

ALR. Validity of cancellation of accrued dividends on preferred corporate stock. 8 A.L.R.2d 893.

Overpayments of dividends on preferred stock as deductible in payment of dividends for later years. 10 A.L.R.2d 241.

Preferred stockholder's rights, upon liquidation or dissolution, to dividends. 25 A.L.R.2d 788.

Rights of preferred stockholders as to past or accumulated dividends in going concern. 27 A.L.R.2d 1073.

Validity and construction of provision restricting transfer of corporate stock,

which conditions transfer upon consent of one other than shareholder, officer, or director of corporation. 53 A.L.R.3d 1272.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 361, 363, 404.

18B Am. Jur. 2d, Corporations §§ 1079 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:662 et seq., 74:691 et seq.

CJS. 18 C.J.S., Corporations §§ 261, 288 et seq.

§ 79-4-6.03. Issued and outstanding shares.

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or cancelled.

(b) The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to Section 79-4-6.40.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that

together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

SOURCES: Laws, 1987, ch. 486, § 6.03, eff from and after January 1, 1988.

Cross References — Shareholder's right to appraisal, see § 79-4-13.02.

RESEARCH REFERENCES

ALR. Validity and construction of provision restricting transfer of corporate stock, which conditions transfer upon consent of one other than shareholder, officer, or director of corporation. 53 A.L.R.3d 1272.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 187, 403-437, 617.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:661-74:695.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1825, 74:1826, 74:1841-74:2041.

CJS. 18 C.J.S., Corporations, §§ 261-276.

§ 79-4-6.04. Fractional shares.

(a) A corporation may:

(1) Issue fractions of a share or pay in money the value of fractions of a share;

(2) Arrange for disposition of fractional shares by the shareholders;

(3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by Section 79-4-6.25(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(1) That the scrip will become void if not exchanged for full shares before a specified date; and

(2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

SOURCES: Laws, 1987, ch. 486, § 6.04, eff from and after January 1, 1988.

Cross References — Shareholder's right to appraisal, see § 79-4-13.02.

SUBARTICLE B.

ISSUANCE OF SHARES.

SEC.

79-4-6.20. Subscription for shares before incorporation.

79-4-6.21. Issuance of shares.

79-4-6.22. Liability of shareholders.

- 79-4-6.23. Share dividends.
- 79-4-6.24. Corporate issuance of rights, options and warrants; board may authorize officer or officers to designate recipients of rights, options and warrants.
- 79-4-6.25. Form and content of certificate.
- 79-4-6.26. Authorization to issue shares without certificates.
- 79-4-6.27. Restriction on transfer of shares and other securities.
- 79-4-6.28. Expenses of issue.

§ 79-4-6.20. Subscription for shares before incorporation.

(a) A subscription for shares entered into before incorporation is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 79-4-6.21.

SOURCES: Laws, 1987, ch. 486, § 6.20, eff from and after January 1, 1988.

Cross References — Liability of purchaser from corporation of its own shares, see § 79-4-6.22.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-31.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-31.

11. In general.

Complainant induced by fraud to purchase stock did not ratify such purchase so

as to preclude him setting it aside by transferring it before discovering the fraud. *Jones v. Barnes*, 107 Miss. 800, 66 So. 212 (1914).

Complainant induced by fraud to purchase stock which he transferred to another held not required to return anything as condition precedent to his right to rescind upon both the assignee and the corporation becoming insolvent. *Jones v. Barnes*, 107 Miss. 800, 66 So. 212 (1914).

Where maker of note for purchase-price of stock set up plea that payee bank had breached its agreement to furnish the

corporation with sufficient capital to carry on business, thereby rendering the stock worthless, it was unnecessary to deny reception of the money by the maker. *Merchants' & Farmers' Bank v. Smith*, 107 Miss. 105, 64 So. 970 (1914).

Subscription to capital stock of corporation to be organized may be withdrawn at any time before organization thereof. *Wright Bros. v. Merchants' & Planters' Packet Co.*, 104 Miss. 507, 61 So. 550, Am. Ann. Cas. 1915C,1111 (1913).

Instruction authorizing recovery on written contract to subscribe for stock because of defendant's attendance at meeting of prospective stockholders and participation therein, held erroneous. *Wright Bros. v. Merchants' & Planters'*

Packet Co., 104 Miss. 507, 61 So. 550, Am. Ann. Cas. 1915C,1111 (1913).

Subscriber who has signed a promissory note to secure payment of his subscription for stock in corporation who afterwards acted as director therein and received a dividend, held estopped, when sued by receiver of the corporation on a separate cause of action, from demanding credit for the sum collected by the corporation on the note although the corporation held it only for collection and such collection was not made until the corporation had become insolvent and was disabled from issuing such subscriber a certificate for his stock. *Allen v. Edwards*, 93 Miss. 719, 47 So. 382 (1908).

RESEARCH REFERENCES

ALR. Enforcement of stock subscription after suit on note of subscriber is barred by statute of limitations. 11 A.L.R.2d 1380.

Conversion by promoter of money paid for preincorporation subscription for stock shares as embezzlement. 84 A.L.R.2d 1100.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 480 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:83 et seq.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1697 et seq.

7 Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 81 et seq.

CJS. 18 C.J.S., Corporations §§ 345 et seq.

§ 79-4-6.21. Issuance of shares.

(a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the

note is paid or the benefits received. If the services are not performed, the note is not paid or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

SOURCES: Laws, 1987, ch. 486, § 6.21; Laws, 1988, ch. 368, § 5, eff from and after passage (approved April 18, 1988).

Cross References — Applicability of this section to subscription agreement entered into after incorporation, see § 79-4-6.20.

Liability of purchaser from corporation of its own shares, see § 79-4-6.22.

Restriction on transfer or registration of transfer of shares, see § 79-4-6.27.

Shareholders' preemptive rights, see § 79-4-6.30.

Purchaser of shares who, at the time of purchase, did not have knowledge of certain agreements authorized by §79-4-7.32 entitled to rescission of the purchase, see § 79-4-7.32.

Procedure for adopting amendments to articles of incorporation once shares have been issued, see § 79-4-10.03.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-35.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-35.

11. In general.

Stock may be paid for by an assignment, in good faith, of contract rights. *Sterling Varnish Co. v. Sonom Co.*, 241 Miss. 810, 133 So. 2d 624 (1961).

This section [Code 1942, § 5327] applies to additional stock, authorized and issued after the corporation has become a going concern, and regardless of whether note given for corporate stock is secured by collateral other than the stock itself. *Graves, Inc. v. Commissioner*, 202 F.2d 286 (5th Cir. Miss. 1953), cert. denied, 346 U.S. 812, 74 S. Ct. 21, 98 L. Ed. 340 (1953).

Intent of this section [Code 1942, § 5327] is that all stock must be fully and actually paid for, and that payee of a note given in purported payment of stock cannot recover thereon, nor can a purchaser with notice. *Graves, Inc. v. Commissioner*, 202 F.2d 286 (5th Cir. Miss. 1953), cert.

denied, 346 U.S. 812, 74 S. Ct. 21, 98 L. Ed. 340 (1953).

This section [Code 1942, § 5327] does not indicate any legislative intention to restrict its application to stock issued by a corporation before it became a going concern, or that it should not apply to additional stock authorized and issued after it became a going concern, or that it does not apply where a note given for corporate stock is secured by collateral other than the stock itself. *Merchants Bank & Trust Co. v. Walker*, 192 Miss. 737, 6 So. 2d 107 (1942).

This section [Code 1942, § 5327] is applicable to banking corporations. *Merchants Bank & Trust Co. v. Walker*, 192 Miss. 737, 6 So. 2d 107 (1942).

Under statute providing that stockholder should be individually liable for debts of corporation contracted during ownership of stock for amount remaining unpaid on stock subscription Code 1942, § 5332, trustee in bankruptcy of corporation held entitled to maintain suit on notes executed by stockholders for balance due on subscriptions for additional stock. *Frazier v. Zachariah*, 174 Miss. 378, 164 So. 893 (1936).

Cancellation and surrender of notes, given by stockholders for purchase of additional stock by president of corporation without authorization of board of directors while corporation was hopelessly insol-

vent and less than one month before filing of petition in bankruptcy, held ineffectual to discharge liability of stockholder for balance due on stock as against trustee in bankruptcy of corporation. *Frazier v. Zachariah*, 174 Miss. 378, 164 So. 893 (1936).

Note given to corporation for stock subscription held enforceable by innocent holder for value paid before maturity, notwithstanding statute providing that note given by subscriber for stock shall not be considered payment therefor. *Gordin v. Bank of Forest*, 170 Miss. 56, 153 So. 375 (1934), error overruled, 170 Miss. 60, 154 So. 341 (1934).

Purchaser knowing notes were given for corporate stock in violation of statute could not recover thereon. *Aldridge v. Rice*, 161 Miss. 879, 138 So. 570 (1932).

That maker, after plaintiff purchased notes given for stock, received dividend and attended stockholders' meeting did not estop maker to set up defense that notes violated statute. *Aldridge v. Rice*, 161 Miss. 879, 138 So. 570 (1932).

Payee of note given in payment of stock in a corporation cannot recover thereon, nor can a purchaser with notice. *Ellis Jones Drug Co. v. Williams*, 139 Miss. 170, 103 So. 810 (1925).

Stock may be paid for in property if done in good faith and on a fair valuation unless the charter or a statutory provision forbids it. *Lea v. Cutrer*, 96 Miss. 355, 51 So. 808, Am. Ann. Cas. 1912B,478 (1910).

Defaulting subscriber cannot set up this section [Code 1942, § 5327] as a bar to liability as a stockholder in an action on behalf of creditors of the corporation. *Allen v. Edwards*, 93 Miss. 719, 47 So. 382 (1908).

All stock must be fully and actually paid for. *Alford v. Laurel Imp. Co.*, 86 Miss. 375, 38 So. 548 (1905); *Graves, Inc. v. Commissioner*, 202 F.2d 286 (5th Cir. Miss. 1953), cert. denied, 346 U.S. 812, 74 S. Ct. 21, 98 L. Ed. 340 (1953).

Subscriber who has not fully paid for his stock cannot maintain replevin to recover the certificate therefor although he has given a note to the corporation for the full amount. *Alford v. Laurel Imp. Co.*, 86 Miss. 375, 38 So. 548 (1905).

Where subscriber gave note for stock and the corporation retained the certificate as security, the fact that the capital was then doubled and another certificate written in name of the subscriber did not entitle him to possession of it. *Alford v. Laurel Imp. Co.*, 86 Miss. 375, 38 So. 548 (1905).

RESEARCH REFERENCES

ALR. Presumption as to value of corporate stock or bonds. 6 A.L.R.2d 189.

Meaning of "book value" of corporate stock. 51 A.L.R.2d 606.

Retroactive effect of statute fixing minimum value of corporate stock shares or otherwise affecting power of corporation to change par value of existing shares. 54 A.L.R.2d 1289.

What amounts to participation by corporate officer or agent in illegal issuance of security, in order to impose liability upon him under state securities regulations. 44 A.L.R.3d 588.

Valuation of corporate stock under "buy-out" or "first option" agreement giving option to or requiring corporation or other stockholders to purchase stock of deceased or withdrawing stockholders. 54 A.L.R.3d 790.

What constitutes waiver of stockholder's or corporation's right to enforce first-

option stock purchase agreement. 55 A.L.R.3d 723.

Valuation of corporate stock for purposes of state gift, inheritance or estate tax, as affected by predetermined price in buy-out or first option agreement among stockholders or with corporation. 58 A.L.R.3d 1104.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity". 16 A.L.R.4th 784.

Valuation of closely held stock for federal estate tax purposes under § 2031(b) of Internal Revenue Code of 1954 (26 USCS § 2031(b)) and implementing regulations. 22 A.L.R. Fed. 31.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 368-371 et seq. *Graves, Inc. v. Commissioner*, 202 F.2d 286 (5th Cir. Miss. 1953), cert. denied, 346 U.S. 812, 74 S. Ct. 21, 98 L. Ed. 340 (1953).

6 Am. Jur. Legal Forms 2d, Corporations § 74:694.

2 Am. Jur. Proof of Facts 625, Book Value.

2 Am. Jur. Proof of Facts 2d 1, Valuation of Stock of Closely Held Corporations.

CJS. 18 C.J.S., Corporations §§ 304 et seq.

§ 79-4-6.22. Liability of shareholders.

(a) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued (Section 79-4-6.21) or specified in the subscription agreement (Section 79-4-6.20).

(b) A shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

SOURCES: Laws, 1987, ch. 486, § 6.22, eff from and after January 1, 1988.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-47.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-47.

11. In general.

A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares, other than the obligation to pay the corporation the full consideration for which its shares were issued or to be issued. *Wood v. Gulf States Capital Corp.*, 217 So. 2d 257 (Miss. 1968).

Stock may be paid for by an assignment, in good faith, of contract rights. *Sterling Varnish Co. v. Sonom Co.*, 241 Miss. 810, 133 So. 2d 624 (1961).

Under statute providing that stockholder should be individually liable for debts of corporation contracted during ownership of stock for amount remaining unpaid on stock subscription, trustee in bankruptcy of corporation held entitled to maintain suit on notes executed by stock-

holders for balance due on subscriptions for additional stock. *Frazier v. Zachariah*, 174 Miss. 378, 164 So. 893 (1936).

Cancellation and surrender of notes, given by stockholders for purchase of additional stock by president of corporation without authorization of board of directors while corporation was hopelessly insolvent and less than one month before filing of petition in bankruptcy, held ineffectual to discharge liability of stockholder for balance due on stock as against trustee in bankruptcy of corporation. *Frazier v. Zachariah*, 174 Miss. 378, 164 So. 893 (1936).

Stockholder held not liable for debts and liabilities of corporation; stockholder of bottling corporation held not liable for damages to buyers where he did not participate in actual bottling of drinks. *Grapico Bottling Co. v. Ennis*, 140 Miss. 502, 106 So. 97, 44 A.L.R. 124 (1925).

President held entitled to recover against stockholders where corporation had repurchased its own stock rendering it insolvent. *First Nat'l Bank v. Pearson*, 109 Miss. 638, 68 So. 921 (1915).

Such stockholders were liable to creditor after the corporation's bankruptcy and trustee's refusal to sue for him. *First Nat'l Bank v. Pearson*, 109 Miss. 638, 68 So. 921 (1915).

Knowledge of bank that money loaned to corporation was to be used for an unauthorized purpose does not render it liable to stockholders for loss arising from misuse of such funds in the absence of fraud on its part. *Beckett v. Planters' Compress & Bonded Whse. Co.*, 107 Miss. 305, 65 So. 275 (1914).

Stockholder's liability for withdrawn capital necessary to pay debts is several. *Kimbrough v. Davies*, 104 Miss. 722, 61 So. 697 (1913).

Bank permitting executrix to fraudulently appropriate and sell stock therein to the prejudice of creditors held not liable to creditors. *Myers v. Martinez*, 95 Miss. 104, 48 So. 291 (1909).

Stockholder held not liable for payment of judgment for damages for infringement of a patent. *B.F. Avery & Sons v. McClure*, 94 Miss. 172, 47 So. 901, 19 Am. Ann. Cas. 134 (1909).

Every subscriber is liable for debts contracted during his ownership of stock and for one year after he transfers it, to the amount of his unpaid subscription. *Allen v. Edwards*, 93 Miss. 719, 47 So. 382 (1908).

A creditor of a corporation may recover the amount of unpaid subscription of a stockholder to its capital stock, although he has given a note to the corporation for the same, payable on calls, and having died before payment, the note has not been probated against his estate within the time prescribed by law. *Robinette v. Starling*, 72 Miss. 652, 18 So. 421 (1895).

In such case the right to sue does not rest upon the relation of debtor and creditor between the plaintiff and stockholder, but upon the statute giving creditors of the corporation a right of action against its delinquent stockholders. *Robinette v. Starling*, 72 Miss. 652, 18 So. 421 (1895).

Under this section [Code 1942, § 5332], making a stockholder liable, to the

amount of his unpaid stock, for corporate debts created during his ownership thereof, the liability to continue for one year after a transfer thereof, the year does not begin until a transfer in the manner provided by the said statute, namely, by indorsement and delivery of the stock certificate and registry of the transfer on the books of the corporation. *Kruger v. Hanover Nat'l Bank*, 72 Miss. 462, 16 So. 351 (1894).

A stockholder in an insolvent corporation who has not paid the stock subscription is liable to the creditors of the corporation and may be sued therefor, and the debt so due by him may be subjected by garnishment as well as in a direct prosecution, and although the subscription is, by its terms, payable on the call of the directors, and no such call has been in fact made. *Scott v. Windham*, 73 Miss. 76, 16 So. 206 (1894).

A subsequent judgment against the stockholders in favor of one creditor of the corporation is erroneous if it fails to provide that no execution shall issue against him until satisfaction of an earlier judgment against him in favor of another creditor of the corporation, and then only for so much, if anything, as may remain due on the subscription. *Scott v. Windham*, 73 Miss. 76, 16 So. 206 (1894).

The liability of a stockholder to a creditor whose debt was contracted during the debtor's ownership of the stock is not discharged by a release executed by the corporation when solvent. *Vick v. La Rochelle*, 57 Miss. 602 (1880).

In a suit by judgment creditors of an insolvent corporation to compel stockholders to pay up on subscriptions, all of the solvent stockholders within the jurisdiction of the court must be joined as defendants, except where there are so many as to justify the charge that they are too numerous to be all made parties. *Vick v. Lane, Hazelhurst & Co.*, 56 Miss. 681 (1879).

RESEARCH REFERENCES

ALR. Statute of frauds: promise by stockholder, officer, or director to pay debt of corporation. 35 A.L.R.2d 906.

Enforceability in another jurisdiction of personal liability of stockholders for debts of corporation whose organization is incomplete or defective. 42 A.L.R.2d 659.

Right or duty of corporation to refuse to transfer stock on presentation of properly indorsed certificate, because of conflicting rights or claims of one other than transferee. 75 A.L.R.2d 746.

Liability of corporate directors or officers for negligence in permitting conver-

sion of property of third persons by corporation. 29 A.L.R.3d 660.

Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Controlling stockholder's duty to investigate intent and motive of purchaser before selling stock. 77 A.L.R.3d 1005.

Availability of and time for bringing action against former director, officer, or stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 27 A.L.R.4th 387.

Professional corporation stockholder's nonmalpractice liability. 50 A.L.R.4th 1276.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 724, 732 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 261 et seq.

CJS. 18 C.J.S., Corporations §§ 679 et seq.

§ 79-4-6.23. Share dividends.

(a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless (1) the articles of incorporation so authorize, (2) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (3) there are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

SOURCES: Laws, 1987, ch. 486, § 6.23, eff from and after January 1, 1988.

Cross References — Corporation's acquisition of its own shares, see § 79-4-6.31.

Record date for distribution to shareholders, see § 79-4-6.40.

Record date for determining shareholders entitled to notice of meeting, to demand special meeting, to vote, or to take other action, see § 79-4-7.07.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-87.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-87.

11. In general.

The receiver may bring such suit as representative of all the creditors.

Metzger v. Joseph, 111 Miss. 385, 71 So. 645 (1916).

Court of equity has jurisdiction of an action of a receiver of an insolvent bank to recover from directors a dividend disbursed in violation of this section [Code 1942, § 5328]. Metzger v. Joseph, 111 Miss. 385, 71 So. 645 (1916).

Receiver, with court authority, may recover from stockholder dividends paid while bank was insolvent. Kretschmar v. Stone, 90 Miss. 375, 43 So. 177 (1907).

Where declaration of receiver in such suit alleges authorization by chancery

court to bring it, it is not demurrable on ground of want of jurisdiction. *Kretschmar v. Stone*, 90 Miss. 375, 43 So. 177 (1907).

RESEARCH REFERENCES

ALR. Validity of cancelation of accrued dividends on preferred corporate stock. 8 A.L.R.2d 893.

Over-payments of dividends on preferred stock as deductible in payment of dividends for later years. 10 A.L.R.2d 241.

Rights of preferred stockholders as to passed or accumulated dividends in going concern. 27 A.L.R.2d 1073.

Dividend rights in surplus of new consolidated corporation resulting from reduction of capital stock of former constituent corporations. 28 A.L.R.2d 1177.

Jurisdiction of action involving dividends of foreign corporation. 72 A.L.R.2d 1211.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 998 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:752 et seq.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:2064 et seq., 74:2092 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 393 et seq.

CJS. 18 C.J.S., Corporations §§ 559 et seq.

§ 79-4-6.24. Corporate issuance of rights, options and warrants; board may authorize officer or officers to designate recipients of rights, options and warrants.

(a) A corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine (i) the terms upon which the rights, options or warrants are issued, and (ii) the terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

(b) The terms and conditions of such rights, options or warrants, including those outstanding on April 20, 2005, may include, without limitation, restrictions or conditions that preclude or limit the exercise, transfer or receipt of such rights, options or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation, or by any transferee or transferees of any such person or persons, or that invalidate or void such rights, options or warrants held by any such person or persons or any such transferee or transferees.

(c) The board of directors may authorize one or more officers to (1) designate the recipients of rights, options, warrants or other equity compensation awards that involve the issuance of shares, and (2) determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants or other equity compensation awards and the terms thereof to be received by the recipients, provided that an officer may not use such authority to designate either himself or herself or any other persons as the board of directors may specify as a recipient of such rights, options, warrants or other equity compensation awards.

SOURCES: Laws, 2005, ch; Laws, 2009, ch. 530, § 2, eff from and after July 1, 2009.

Editor's Note — A former § 79-4-6.24 [Laws, 1987, ch. 486, § 6.24; Laws, 2001, ch. 435, § 3, eff from and after July 1, 2001; Repealed by Laws, 2004, ch. 495, § 6, eff from and after July 1, 2004] also contained provisions for the issuance of rights, options, and warrants.

Amendment Notes — The 2009 amendment added (c).

RESEARCH REFERENCES

CJS. 18 C.J.S., Corporations §§ 358, 494.

§ 79-4-6.25. Form and content of certificate.

(a) Shares may but need not be represented by certificates. Unless this act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) The name of the issuing corporation and that it is organized under the law of this state;

(2) The name of the person to whom issued; and

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate or the corporation must furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate (1) must be signed (either manually or in facsimile) by two (2) officers designated in the bylaws or by the board of directors, and (2) may bear the corporate seal or its facsimile.

(e) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

SOURCES: Laws, 1987, ch. 486, § 6.25; Laws, 1990, ch. 384, § 55, eff from and after July 1, 1990.

Cross References — Applicability of this section to certificates representing "scrip," see § 79-4-6.04.

Application of this section to requirements for issuing shares without certificates, see § 79-4-6.26.

RESEARCH REFERENCES

ALR. Necessity of delivery of stock certificates to complete valid gift of stock. 23 A.L.R.2d 1171.

Validity, construction, and effect of articles of incorporation or stock certificates relating to call, redemption, or retirement of common stock. 48 A.L.R.2d 392.

Right or duty of corporation to refuse to transfer stock on presentation of properly indorsed certificate, because of conflicting

rights or claims of one other than transferee. 75 A.L.R.2d 746.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 405, 406.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1111 et seq.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1861 et seq.

CJS. 18 C.J.S., Corporations §§ 325 et seq.

§ 79-4-6.26. Authorization to issue shares without certificates.

(a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by Section 79-4-6.25(b) and (c), and if applicable, Section 79-4-6.27.

SOURCES: Laws, 1990 Ex Sess, ch. 47, § 1, eff from and after July 1, 1990.

Cross References — Existence of certain shareholder agreements, specifically permitted although otherwise inconsistent with this chapter, to be noted on share certificate or on information statement required by this section, see § 79-4-7.32.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 405.

CJS. 18 C.J.S., Corporations § 235.

§ 79-4-6.27. Restriction on transfer of shares and other securities.

(a) The articles of incorporation, bylaws, an agreement among shareholders or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information

statement required by Section 79-4-6.26(b). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(2) To preserve exemptions under federal or state securities law;

(3) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons (separately, consecutively or simultaneously) an opportunity to acquire the restricted shares;

(2) Obligate the corporation or other persons (separately, consecutively or simultaneously) to acquire the restricted shares;

(3) Require the corporation, the holders of any class of its shares or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

SOURCES: Laws, 1987, ch. 486, § 6.27; Laws, 1990, ch. 384, § 56, eff from and after July 1, 1990.

Cross References — Application of this section to requirements for issuing shares without certificates, see § 79-4-6.26.

RESEARCH REFERENCES

ALR. Validity and construction of provision restricting transfer of corporate stock, which conditions transfer upon consent of one other than shareholder, officer, or director of corporation. 53 A.L.R.3d 1272.

What constitutes waiver of stockholder's or corporation's right to enforce first-option stock purchase agreement. 55 A.L.R.3d 723.

Valuation of corporate stock for purposes of state gift, inheritance or estate tax, as affected by predetermined price in

buy-out or first option agreement among stockholders or with corporation. 58 A.L.R.3d 1104.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 172, 570-591.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:731-74:739, 74:1116, 74:1131.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1886, 74:1924, 74:1941-74:1949.

7A Am. Jur. Pl & Pr Forms, Corporations, Form 101.

CJS. 18 C.J.S., Corporations § 478.

§ 79-4-6.28. Expenses of issue.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

SOURCES: Laws, 1987, ch. 486, § 6.28 eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d, 6A Am. Jur. Legal Forms 2d, Corporations § 74:593. tions § 74:1708.

SUBARTICLE C.

SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION.

SEC.

79-4-6.30. Shareholders' preemptive rights.

79-4-6.31. Corporation's acquisition of its own shares.

§ 79-4-6.30. Shareholders' preemptive rights.

(a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) There is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(ii) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(iii) Shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation;

(iv) Shares sold otherwise than for money.

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year after

being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

SOURCES: Laws, 1987, ch. 486, § 6.30, eff from and after January 1, 1988.

RESEARCH REFERENCES

ALR. What constitutes waiver of stockholder's or corporation's right to enforce first-option stock purchase agreement. 55 A.L.R.3d 723.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 438 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:701, 74:702.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 62.

3 Am. Jur. Proof of Facts 2d 379, Waiver of Right to Enforce "First Option" Stock Purchase Requirement, §§ 16 et seq.

CJS. 18 C.J.S., Corporations §§ 265, 277.

§ 79-4-6.31. Corporation's acquisition of its own shares.

(a) A corporation may acquire its own shares, and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

SOURCES: Laws, 1987, ch. 486, § 6.31; Laws, 2000, ch. 469, § 2, eff from and after July 1, 2000.

Cross References — Board of directors authorized to adopt amendments to articles of incorporation to reflect reduction in authorized shares or to delete a class of changes as a result of the operation of this section without shareholder approval, see § 79-4-10.05.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II Under Former § 79-3-9.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II Under Former § 79-3-9.

11. In general.

Where the trial court held that promissory notes of a corporation executed for

the purchase of the corporation's stock from the payees were good and valid obligations and no cross-appeal was taken from this finding, the question was not reviewable on appeal. *Cooper v. Mississippi Land Co.*, 220 So. 2d 302 (Miss. 1969).

The deed of an insolvent corporation, or of a corporation rendered insolvent by reason of its execution, by which it undertook to convey substantially all of its assets to persons who were all of its officers, directors, and stockholders is void; for insiders cannot prefer themselves in pay-

ment of pre-existing debts and thus deprive other creditors of the corporation of their claims; and such creditors had a lien upon the assets of the corporation superior to that of a mortgagee which held a deed of trust executed by the corporation's grantees as to all property not covered by prior deeds of trust executed by the corporation. *Cooper v. Mississippi Land Co.*, 220 So. 2d 302 (Miss. 1969).

This section [Code 1942, § 5311], by clearest implication, permits a corporation to retire its stock at will unless in the process it renders the corporation insol-

vent, and it follows that where a particular transaction working a retirement of capital stock is attacked, the burden is on the moving party to show insolvency. *Alcott Co. v. Raphael*, 275 F.2d 551 (5th Cir. 1960).

In order to set aside a conveyance of real estate by a bankrupt corporation to its stockholder, the trustee in bankruptcy must prove the insolvency of the corporation following, and as a result of, the transfer. *Alcott Co. v. Raphael*, 275 F.2d 551 (5th Cir. 1960).

RESEARCH REFERENCES

ALR. Construction and operation of statute restricting corporation's right to purchase its own stock to purchase from surplus. 61 A.L.R.3d 1049.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity". 16 A.L.R.4th 784.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1775 et seq.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1763 et seq.

CJS. 19 C.J.S., Corporations § 1028.

SUBARTICLE D.

DISTRIBUTIONS.

Sec.

79-4-6.40. Distributions to shareholders.

§ 79-4-6.40. Distributions to shareholders.

(a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c).

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption or other acquisition of the corporation's shares), it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as otherwise provided in subsection (g), the effect of a distribution under subsection (c) is measured;

(1) In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of (i) the date money or other property is transferred or debt incurred by the corporation, or (ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of (i) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization, or (ii) the date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

(h) This section shall not apply to distributions in liquidation under Article 14 (Section 79-4-14.01 et seq.).

SOURCES: Laws, 1987, ch. 486, § 6.40; Laws, 1988, ch. 369, § 2; Laws, 2001, ch. 435, § 4, eff from and after July 1, 2001.

Cross References — Applicability of this section to reacquisition, redemption or conversion of shares, see § 79-4-6.03.

Record date for determining shareholders entitled to a share dividend, see § 79-4-6.40.

Record date for determining shareholders entitled to notice of meeting, to demand special meeting, to vote, or to take other action, see § 79-4-1.07.

Certain shareholder agreements as to authorization or making of distributions, although otherwise inconsistent with act, permitted subject to limitations in this section, see § 79-4-7.32.

Director's liability for unlawful distributions, see § 79-4-8.33.

Applicability of this section to sale, lease, exchange or other disposition of all, or substantially all, property of corporation other than in regular course of business that constitutes a distribution, see § 79-4-12.02.

Payment by corporation, pursuant to order directing buyout of shareholder petitioning to dissolve corporation whose shares are not listed or regularly traded, as subject to provisions of this section, see § 79-4-14.34.

Distribution to shareholders during voluntary dissolution of corporation, see §§ 79-4-14.01 et seq.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-85.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-85.

11. In general.

In order to set aside a conveyance of real estate by a bankrupt corporation to its stockholder, the trustee in bankruptcy must prove the insolvency of the corporation following, and as a result of, the transfer. *Alcott Co. v. Raphael*, 275 F.2d 551 (5th Cir. 1960).

Cancellation and surrender of notes, given by stockholders for purchase of additional stock, by president of corporation without authorization of the board of directors and while corporation was insolvent, less than one month before filing of petition in bankruptcy, was ineffectual to discharge liability of stockholder for bal-

ance due on stock as against trustee in bankruptcy. *Frazier v. Zachariah*, 174 Miss. 378, 164 So. 893 (1936).

One year statute of limitations on suits for penalties does not bar action under this section [Code 1942, § 5328]. *Metzger v. Joseph*, 111 Miss. 385, 71 So. 645 (1916).

This section [Code 1942, § 5328] is not penal but remedial. *Metzger v. Joseph*, 111 Miss. 385, 71 So. 645 (1916).

State banking law did not repeal this section [Code 1942, § 5328] as applicable to banks. *Metzger v. Joseph*, 111 Miss. 385, 71 So. 645 (1916).

Corporation's capital cannot be withdrawn by stockholders until all debts are paid. *Kimbrough v. Davies*, 104 Miss. 722, 61 So. 697 (1913).

Liability of stockholders for withdrawn capital necessary to pay creditors is several. *Kimbrough v. Davies*, 104 Miss. 722, 61 So. 697 (1913).

This section [Code 1942, § 5328] does not prevent recovery of portion of corporation's capital withdrawn for distribution among stockholders and necessary to pay debts. *Kimbrough v. Davies*, 104 Miss. 722, 61 So. 697 (1913).

RESEARCH REFERENCES

ALR. Dividend rights in surplus of new consolidated corporation resulting from reduction of capital stock of former constituent corporations. 28 A.L.R.2d 1177.

Reduction of capital stock and distribution of capital assets on reduction. 35 A.L.R.2d 1149.

Modern status of rules governing allocations of stock dividends or splits between principal and income. 81 A.L.R.3d 876.

Am Jur. 18B Am. Jur. 2d, Corporations § 1019.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 263.1 (complaint by judgment creditor against sole stockholder receiving distributions of corporate property causing corporation to become insolvent).

22 Am. Jur. Proof of Facts 2d 593, Wrongful Failure of Corporate Directors to Declare Dividend.

CJS. 18 C.J.S., Corporations §§ 543, 545.

ARTICLE 7.

SHAREHOLDERS.

Subarticle A. Meetings.....	79-4-7.01
Subarticle B. Voting.....	79-4-7.20
Subarticle C. Voting Trusts and Agreements.....	79-4-7.30
Subarticle D. Derivative Procedures.....	79-4-7.40

SUBARTICLE A.

MEETINGS.

SEC.	
79-4-7.01.	Annual meeting.
79-4-7.02.	Special meeting.
79-4-7.03.	Court-ordered meeting.
79-4-7.04.	Action without meeting.
79-4-7.05.	Notice of meeting.
79-4-7.06.	Waiver of notice.
79-4-7.07.	Record date.
79-4-7.08.	Appointment of chair to preside over meetings; duties of chair.

§ 79-4-7.01. Annual meeting.

(a) Unless directors are elected by written consent in lieu of an annual meeting as permitted by Section 79-4-7.04, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws; provided, however, that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to Section 79-4-7.28, directors may not be elected by less than unanimous written consent.

(b) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

SOURCES: Laws, 1987, ch. 486, § 7.01; Laws, 2007, ch. 361, § 4, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment rewrote (a) to revise election of directors at the annual meeting.

Cross References — Special meeting, see § 79-4-7.02.

Right of shareholder who signed demand for special meeting to apply for court-ordered meeting of shareholders, see § 79-4-7.03.

Notice of meeting, see § 79-4-7.05.

Copies of minutes of shareholders' meetings to be maintained at corporation's principal office, see § 79-4-16.01.

Appointment of party to voting agreement as proxy as being an appointment coupled with an interest, see § 79-4-7.22.

JUDICIAL DECISIONS

1. In general.

Although the shareholders did not ratify the president's act of terminating an attorney's position as an employee until more than a year after the fact, the action was invalidated by the lack of yearly

meeting under Miss. Code Ann. § 79-4-7.01 which applied to the corporation by Miss. Code Ann. § 79-10-3. *Jowett v. Scruggs*, 901 So. 2d 638 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273 (Miss. 2005).

RESEARCH REFERENCES

ALR. Remedies to restrain or compel holding of stockholders' meetings. 48 A.L.R.2d 615.

Holding directors', officers', stockholders', or sales meetings or conventions in a state by foreign corporation as doing business or otherwise subjecting it to service of process and suit. 84 A.L.R.2d 412.

Corporations: casting of ballots after closing of polls. 41 A.L.R.3d 234.

Participation in meeting as waiver of compliance with notice requirement for shareholders' meeting. 64 A.L.R.3d 358.

Right of corporation to discharge employee who asserts right as stockholder. 84 A.L.R.3d 1107.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 789 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:951 et seq.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1543 et seq.

CJS. 18 C.J.S., Corporations §§ 635-678.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-7.02. Special meeting.

(a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) Unless the articles of incorporation provide otherwise, if shareholders having at least ten percent (10%) of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or

fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by Section 79-4-7.05(c) may be conducted at a special shareholders' meeting.

SOURCES: Laws, 1987, ch. 486, § 7.02; Laws, 1997, ch. 418, § 49, eff from and after July 1, 1997.

Cross References — Right of shareholder who signed demand for special meeting to apply for court-ordered meeting of shareholders, see § 79-4-7.03.

Timing of and information to be included in notice of special meeting, see § 79-4-7.05.

RESEARCH REFERENCES

ALR. Remedies to restrain or compel holding of stockholders' meeting. 48 A.L.R.2d 615.

Participation in meeting as waiver of compliance with notice requirement for shareholders' meeting. 64 A.L.R.3d 358.

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations §§ 74:952, 74:955.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1543-74:1545, 74:1553, 74:1557, 74:1558, 74:1584.

CJS. 18 C.J.S., Corporations § 639.

§ 79-4-7.03. Court-ordered meeting.

(a) The chancery court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting or written consent in lieu thereof; or

(2) On application of a shareholder who signed a demand for a special meeting valid under Section 79-4-7.02 if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

SOURCES: Laws, 1987, ch. 486, § 7.03; Laws, 2007, ch. 361, § 5, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment, in (a)(1), inserted “or action by written consent in lieu thereof did not become effective” and “or written consent in lieu thereof.”

Cross References — Record date for determining shareholders entitled to demand special meeting where date is not fixed under this section, see § 79-4-7.02.

Record date for determining shareholders entitled to take action without meeting where date is not otherwise determined under this section, see § 79-4-7.04.

Record date for determining shareholders entitled to notice of and to vote at annual or special shareholder’s meeting where date is not otherwise determined under this section, see § 79-4-7.05.

RESEARCH REFERENCES

ALR. Participation in meeting as waiver of compliance with notice requirement for shareholders’ meeting. 64 A.L.R.3d 358.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 992-997.

CJS. 18 C.J.S., Corporations § 652.

§ 79-4-7.04. Action without meeting.

(a) Action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholders’ meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records. A unanimous consent signed under this subsection is the act of the shareholders when consents signed by all shareholders have been delivered to the corporation.

(b) The articles of incorporation may provide that any action required or permitted by Section 79-4-1.01 et seq. to be taken at a shareholder’s meeting may be taken without a meeting and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(c) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date on which a consent delivered to the corporation as required by this section was signed,

written consents signed by the holders of shares having sufficient votes to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporation action are delivered to the corporation.

(d) A consent signed pursuant to the provisions of this section has the effect of a vote taken at a meeting and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by less than unanimous written consent shall be effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

(e) If Section 79-4-1.01 et seq. requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten (10) days after (i) written consents sufficient to take the action have been delivered to the corporation, or (ii) such later date that tabulation of consents is completed pursuant to an authorization under subsection (d). The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under Section 79-4-1.01 et seq., would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact.

(i) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

SOURCES: Laws, 1987, ch. 486, § 7.04; Laws, 2007, ch. 361, § 6, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment rewrote the section to revise action by written consent in lieu of a meeting.

RESEARCH REFERENCES

ALR. Participation in meeting as waiver of compliance with notice requirement for shareholders' meeting. 64 A.L.R.3d 358.

Am Jur. 18A Am. Jur. 2d, Corporations § 790.

CJS. 18 C.J.S., Corporations § 539.

§ 79-4-7.05. Notice of meeting.

(a) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless Section 79-4-1.01 et seq. or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under Section 79-4-7.03 or 79-4-7.07, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 79-4-7.07, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

SOURCES: Laws, 1987, ch. 486, § 7.05; Laws, 1988, ch. 369, § 3, eff from and after passage (approved April 18, 1988).

Cross References — Applicability of this section to business that may be conducted at special shareholders' meeting, see § 79-4-7.02.

Waiver of notice, see § 79-4-7.06.

Shareholders' list to be made available for inspection by shareholder beginning two business days after notice of shareholder's meeting is given, see § 79-4-7.20.

Applicability of this section to notice of a shareholders' meeting to consider amendments to articles of incorporation, see § 79-4-10.03.

Applicability of this section to notice of shareholders' meeting to consider restatement of articles of incorporation, see § 79-4-10.07.

Applicability of this section to notice of shareholders' meeting to consider plan of merger or share exchange, see § 79-4-11.04.

Applicability of this section to notice of shareholders' meeting to consider sale, lease, exchange, or other disposition of all, or substantially all, property of corporation other than in regular course of business, see § 79-4-12.02.

Requirement that corporation notify each shareholder, whether or not entitled to vote, in accordance with this section, of shareholders' meeting to consider proposed dissolution of the corporation, see § 79-4-14.02.

RESEARCH REFERENCES

ALR. Participation in meeting as waiver of compliance with notice requirement for shareholders' meeting. 64 A.L.R.3d 358.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 803 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:956, 74:956.1 (bylaws — no-

tice of meetings — to holders of stock not entitled to vote), 74:957.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1553-74:1558.

CJS. 18 C.J.S., Corporations § 640.

§ 79-4-7.06. Waiver of notice.

(a) A shareholder may waive any notice required by Sections 79-4-1.01 et seq., the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

SOURCES: Laws, 1987, ch. 486, § 7.06, eff from and after January 1, 1988.

RESEARCH REFERENCES

ALR. Participation in meeting as waiver of compliance with notice requirement for shareholders' meeting. 64 A.L.R.3d 358.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 817-820.

18B Am. Jur. 2d, Corporations § 1191.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:958, 74:959.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1572-74:1574.

§ 79-4-7.07. Record date.

(a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of shareholders' meeting, to demand a special meeting, to vote, or to take

any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred-twenty (120) days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred-twenty (120) days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

SOURCES: Laws, 1987, ch. 486, § 7.07, eff from and after January 1, 1988.

Cross References — Record date for share dividends, see § 79-4-6.23.

Record date for determining shareholders entitled to demand special meeting where date is not fixed under this section, see § 79-4-7.02.

Record date for determining shareholders entitled to take action without meeting where date is not otherwise determined under this section, see § 79-4-7.04.

Record date for determining shareholders entitled to notice of and to vote at annual or special shareholder's meeting where date is not otherwise determined under this section, see § 79-4-7.05.

Requirement of notice of adjourned meeting where new record date for meeting is or must be fixed under this section, see § 79-4-7.05.

RESEARCH REFERENCES

ALR. Rights, duties, and liability of corporation in connection with transfer of stock of infant or incompetent. 3 A.L.R.2d 881.

Rights, duties, and liability in connection with transfer of stock of decedent. 7 A.L.R.2d 1240.

Remedy for refusal of corporation or its agent to register of effectuate transfer of stock. 22 A.L.R.2d 12.

Validity of restrictions on alienation or transfer of corporate stock. 61 A.L.R.2d 1318.

Right or duty of corporation to refuse to transfer stock on presentation of properly indorsed certificate, because of conflicting rights or claims of one other than transferee. 75 A.L.R.2d 746.

Validity and construction of provision restricting transfer of corporate stock,

which conditions transfer upon consent of one other than shareholder, officer, or director of corporation. 53 A.L.R.3d 1272.

Construction and effect of "dilution" provision of employee's stock option contract, dealing with rights where stock structure of corporation changes before option is exercised. 59 A.L.R.3d 1030.

Restrictions on transfer of corporate stock as applicable to testamentary dispositions thereof. 61 A.L.R.3d 1090.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 858 et seq., 914.

18B Am. Jur. 2d, Corporations §§ 1036, 1066.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1119, 74:1120.

§ 79-4-7.08. Appointment of chair to preside over meetings; duties of chair.

(a) At each meeting of shareholders, a chair shall preside. The chair shall be appointed as provided in the bylaws, or, in the absence of such provision, by the board.

(b) The chair, unless the articles of incorporation or bylaws provide otherwise, shall determine the order of business and shall have the authority to establish rules for the conduct of the meeting.

(c) Any rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

SOURCES: Laws, 1997, ch. 418, § 50, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations
§ 828.

SUBARTICLE B.**VOTING.****SEC.**

- | | |
|------------|---|
| 79-4-7.20. | Shareholders' list for meeting. |
| 79-4-7.21. | Voting entitlement of shares. |
| 79-4-7.22. | Proxies. |
| 79-4-7.23. | Shares held by nominees. |
| 79-4-7.24. | Corporation's acceptance of votes. |
| 79-4-7.25. | Quorum and voting requirements for voting groups. |
| 79-4-7.26. | Action by single and multiple voting groups. |
| 79-4-7.27. | Greater quorum or voting requirements. |
| 79-4-7.28. | Voting for directors; cumulative voting. |
| 79-4-7.29. | Appointment of election inspectors; duties of inspectors. |

§ 79-4-7.20. Shareholders' list for meeting.

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder beginning two (2) business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the

corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent or attorney is entitled on written demand to inspect and, subject to the requirements of Section 79-4-16.02(c), to copy the list during regular business hours and at his expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, his agent or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the chancery court of the county where a corporation's principal office (or, if none in this state, its registered office) is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

SOURCES: Laws, 1987, ch. 486, § 7.20, eff from and after January 1, 1988.

Cross References — General rights of shareholders to inspect and copy certain corporate records, as not affecting shareholders' right to inspect records under this section, see § 79-4-16.02.

RESEARCH REFERENCES

ALR. Who may exercise voting power of corporate stock pending settlement of estate of deceased owner. 7 A.L.R.3d 629.

Right, as between pledgor and pledgee, to vote pledged stock. 68 A.L.R.3d 680.

Am Jur. 18 Am. Jur. 2d, Corporations § 23.

18A Am. Jur. 2d, Corporations §§ 835 et seq., 850.

6 Am. Jur. Legal Forms 2d, Corporations § 74:981.

CJS. 18 C.J.S., Corporations §§ 644 et seq.

§ 79-4-7.21. Voting entitlement of shares.

(a) Except as provided in subsections (b) and (c) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an

irrevocable obligation to pay the holders the redemption price on surrender of the shares.

SOURCES: Laws, 1987, ch. 486, § 7.21, eff from and after January 1, 1988.

Cross References — Shareholder's right to appraisal, see § 79-4-13.02.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-63.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-63.

11. In general.

Court authority is not per se necessary

to authorize an executrix with will annexed to exercise the estate's stock voting rights in a closely held corporation. *Harper v. Harper*, 491 So. 2d 189 (Miss. 1986).

RESEARCH REFERENCES

ALR. Who may exercise voting power of corporate stock pending settlement of estate of deceased owner. 7 A.L.R.3d 629.

Corporation: validity of charter provision for non-voting common stock. 52 A.L.R.3d 1131.

Right, as between pledgor and pledgee, to vote pledged stock. 68 A.L.R.3d 680.

Right of corporation to discharge employee who asserts right as stockholder. 84 A.L.R.3d 1107.

Validity of variations from one share-one vote rule under modern corporate law. 3 A.L.R.4th 1204.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 858 et seq., 876 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:971 et seq.

CJS. 18 C.J.S., Corporations §§ 645 et seq.

§ 79-4-7.22. Proxies.

(a) A shareholder may vote his shares in person or by proxy.

(b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent or the shareholder's attorney-in-fact authorized the electronic transmission.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to

tabulate votes. An appointment is valid for eleven (11) months unless a longer period is expressly provided in the appointment.

(d) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (1) A pledgee;
- (2) A person who purchased or agreed to purchase the shares;
- (3) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (4) An employee of the corporation whose employment contract requires the appointment; or
- (5) A party to a voting agreement created under Section 79-4-7.31.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to Section 79-4-7.24 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

SOURCES: Laws, 1987, ch. 486, § 7.22; Laws, 1997, ch. 418, § 51, eff from and after July 1, 1997.

Cross References — Procedure by which beneficial owner of shares registered in name of nominee may be recognized as the shareholder, see § 79-4-23.

Corporation accepting or rejecting vote, consent, waiver or proxy appointment in accordance with § 79-4-7.24 or this section not liable in damages to shareholder for consequences of acceptance or rejection, see § 79-4-7.24.

RESEARCH REFERENCES

ALR. Expenses incurred by competing factions within corporation in soliciting proxies as charge against corporation. 51 A.L.R.2d 873.

Corporations: power of inspectors of

election relating to irregular or conflicting proxies. 44 A.L.R.3d 1443.

Right, as between pledgor and pledgee, to vote pledged stock, 68 A.L.R.3d 680.

Misrepresentation in proxy solicitation-

state cases. 20 A.L.R.4th 1287.

Am Jur. 18A Am. Jur. 2d, Corporations
§§ 944 et seq.

6A Am. Jur. Legal Forms 2d, Corporations
§§ 74:1591-74:1604.

CJS. 18 C.J.S., Corporations § 647.

§ 79-4-7.23. Shares held by nominees.

(a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

- (1) The types of nominees to which it applies;
- (2) The rights or privileges that the corporation recognizes in a beneficial owner;
- (3) The manner in which the procedure is selected by the nominee;
- (4) The information that must be provided when the procedure is selected;
- (5) The period for which selection of the procedure is effective; and
- (6) Other aspects of the rights and duties created.

SOURCES: Laws, 1987, ch. 486, § 7.23, eff from and after January 1, 1988.

RESEARCH REFERENCES

ALR. Right, as between pledgor and pledgee, to vote pledged stock. 68 A.L.R.3d 680.

§ 79-4-7.24. Corporation's acceptance of votes.

(a) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of the shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if:

- (1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
- (2) The name signed purports to be that of an administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;
- (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(4) The name signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver or proxy appointment;

(5) Two (2) or more persons are the shareholders as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section or Section 79-4-7.22(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section or Section 79-4-7.22(b) is valid unless a court of competent jurisdiction determines otherwise.

SOURCES: Laws, 1987, ch. 486, § 7.24; Laws, 1997, ch. 418, § 52, *eff from and after July 1, 1997.*

Cross References — Authority of corporation to accept proxy's vote or other action as that of shareholder making appointment, see § 79-4-7.22.

RESEARCH REFERENCES

ALR. Right, as between pledgor and pledgee, to vote pledged stock. 68 A.L.R.3d 680. **CJS.** 18 C.J.S., Corporations §§ 644, 645.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 846, 859, 864, 911.

§ 79-4-7.25. Quorum and voting requirements for voting groups.

(a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or Sections 79-4-1.01 et seq. provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or Sections 79-4-1.01 et seq. require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection (b) or (c) is governed by Section 79-4-7.27.

(e) The election of directors is governed by Section 79-4-7.28.

SOURCES: Laws, 1987, ch. 486, § 7.25, eff from and after January 1, 1988.

Cross References — Action by single and multiple voting groups, see § 79-4-7.26.

Articles of incorporation may provide for greater quorum or voting requirements for shareholders than provided for by this section, see § 79-4-7.27.

Applicability of this section to adoption of amendments to articles of incorporation, see § 79-4-10.03.

Shareholder's right to appraisal, see § 79-4-13.02.

Deadlock among shareholders in electing directors as grounds for judicial dissolution of corporation, see § 79-4-14.30.

RESEARCH REFERENCES

ALR. Who may exercise voting power of corporate stock pending settlement of estate of deceased owner. 7 A.L.R.3d 629.

Duty of pledgee of stocks, bonds or similar securities to protect their value during period of pledge, under UCC § 9-207. 68 A.L.R.3d 657.

Right, as between pledgor and pledgee, to vote pledged stock. 68 A.L.R.3d 680.

Validity of variations from one share-one vote rule under modern corporate law. 3 A.L.R.4th 1204.

Validity, construction, and effect of provision in charter or bylaw requiring supermajority vote. 80 A.L.R.4th 667.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 830 et seq., 840, 841, 850 et seq.

18B Am. Jur. 2d, Corporations §§ 1198, 1200.

CJS. 18 C.J.S., Corporations §§ 642-644, 650.

§ 79-4-7.26. Action by single and multiple voting groups.

(a) If the articles of incorporation or Sections 79-4-1.01 et seq. provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in Section 79-4-7.25.

(b) If the articles of incorporation or Sections 79-4-1.01 et seq. provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in Section 79-4-7.25. Action may be taken by one (1) voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

SOURCES: Laws, 1987, ch. 486, § 7.26, eff from and after January 1, 1988.

Cross References — Applicability of this section to adoption of amendments to articles of incorporation, see § 79-4-10.03.

Deadlock among shareholders in electing directors as grounds for judicial dissolution of corporation, see § 79-4-14.30.

RESEARCH REFERENCES

ALR. Validity of variations from one share-one vote rule under modern corporate law. 3 A.L.R.4th 1204.

Defamation of class or group as actionable by individual member. 52 A.L.R.4th 618.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 854-856, 868-875.

CJS. 18 C.J.S., Corporations §§ 644, 645.

§ 79-4-7.27. Greater quorum or voting requirements.

(a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by Sections 79-4-1.01 et seq.

(b) An amendment to the articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

SOURCES: Laws, 1987, ch. 486, § 7.27, eff from and after January 1, 1988.

Cross References — General quorum and voting requirements for voting groups, see § 79-4-7.25.

Deadlock among shareholders in electing directors as grounds for judicial dissolution of corporation, see § 79-4-14.30.

RESEARCH REFERENCES

ALR. Validity of variations from one share-one vote rule under modern corporate law. 3 A.L.R.4th 1204.

Validity, construction, and effect of provision in charter or bylaw requiring supermajority vote. 80 A.L.R.4th 667.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 832, 841.

CJS. 18 C.J.S., Corporations §§ 642, 643.

§ 79-4-7.28. Voting for directors; cumulative voting.

(a) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) For corporations incorporated before July 1, 2002, shareholders shall have a right to cumulate their votes for directors unless the articles of incorporation provide otherwise. For corporations incorporated on or after July 1, 2002, shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide otherwise.

(c) A statement included in the articles of incorporation that “a designated voting group of shareholders is entitled to cumulate their votes for directors,” or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

SOURCES: Laws, 1987, ch. 486, § 7.28; Laws, 1988, ch. 368, § 6; Laws, 2001, ch. 435, § 5, eff from and after July 1, 2001.

Cross References — General quorum and voting requirements for voting groups, see § 79-4-7.25.

Articles of incorporation may provide for greater quorum or voting requirements for shareholders than provided for by § 79-4-7.25, see § 79-4-7.27.

Appointment and duties of election inspectors, see § 79-4-7.29.

Shareholder's right to appraisal, see § 79-4-13.02.

Deadlock among shareholders in electing directors as grounds for judicial dissolution of corporation, see § 79-4-14.30.

RESEARCH REFERENCES

ALR. Validity of variations from one share-one vote rule under modern corporate law. 3 A.L.R.4th 1204. 6 Am. Jur. Legal Forms 2d, Corporations § 74:983.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1205 et seq. **CJS.** 18 C.J.S., Corporations §§ 645, 646.

§ 79-4-7.29. Appointment of election inspectors; duties of inspectors.

(a) A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall:

- (1) Ascertain the number of shares outstanding and the voting power of each;
- (2) Determine the shares represented at a meeting;
- (3) Determine the validity of proxies and ballots;
- (4) Count all votes; and
- (5) Determine the result.

(c) An inspector may be an officer or employee of the corporation.

SOURCES: Laws, 1997, ch. 418, § 53, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations
§ 843 et seq., 911 et seq.

SUBARTICLE C.

VOTING TRUSTS AND AGREEMENTS.

SEC.

- 79-4-7.30. Voting trusts.
- 79-4-7.31. Voting agreements.
- 79-4-7.32. Certain agreements among shareholders, otherwise inconsistent with chapter, permitted; conditions.

§ 79-4-7.30. Voting trusts.

(a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten (10) years after its effective date unless extended under subsection (c).

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than ten (10) years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for ten (10) years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

SOURCES: Laws, 1987, ch. 486, § 7.30 eff from and after January 1, 1988.

Cross References — Inapplicability of provisions of this section to voting agreements, see § 79-4-7.31.

RESEARCH REFERENCES

ALR. Validity of provision of voting trust against transfer of beneficiary's interest. 11 A.L.R.2d 1000.

Removal of trustee of voting trust. 34 A.L.R.2d 1136.

Validity and effect of agreement controlling the vote of corporate stock. 45 A.L.R.2d 799.

Validity of voting trust or other similar agreement for control of voting power of

corporate stock. 98 A.L.R.2d 376.

Right, as between pledgor and pledgee, to vote pledged stock. 68 A.L.R.3d 680.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Validity of voting trust created by will. 77 A.L.R.4th 1194.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 956 et seq.

6 Am. Jur. Legal Forms 2d, Corporations § 74:978.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1622, 74:1624, 74:1647 (discharge of voting trustees on termination of voting trust agreement).

CJS. 18 C.J.S., Corporations § 649.

§ 79-4-7.31. Voting agreements.

(a) Two (2) or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of Section 79-4-7.30.

(b) A voting agreement created under this section is specifically enforceable.

SOURCES: Laws, 1987, ch. 486, § 7.31, eff from and after January 1, 1988.

Cross References — Appointment of party to voting agreement created under this section as appointment coupled with an interest, see § 79-4-22.

RESEARCH REFERENCES

ALR. Validity and effect of agreement controlling the vote of corporate stock. 45 A.L.R.2d 799.

Right, as between pledgor and pledgee, to vote pledged stock. 68 A.L.R.3d 680.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 944 et seq.

6 Am. Jur. Legal Forms 2d, Corporations § 74:982.

6A Am. Jur. Legal Forms 2d, Corporations § 74:1647 (discharge of voting trustees on termination of voting trust agreement).

CJS. 18 C.J.S., Corporations § 648.

Law Reviews. Kruger, Corporate pooling agreements and restriction-of-directors agreements. 10 Anglo-American Law Review 73, 1981.

§ 79-4-7.32. Certain agreements among shareholders, otherwise inconsistent with chapter, permitted; conditions.

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in Section 79-4-6.40;

(3) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) Set forth (A) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement, or (B) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(3) Valid for ten (10) years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by Section 79-4-6.26(b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection (c) and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection (c) must

be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

SOURCES: Laws, 1993, ch. 368, § 1; Laws, 1994, ch. 417, § 2; Laws, 2006, ch. 429, § 3, eff from and after July 1, 2006.

Cross References — Requirement for and duties of Board of Directors, generally, see § 79-4-8.01.

RESEARCH REFERENCES

Am Jur. 18-19 Am. Jur. 2d, Corporations §§ 1 et seq. **CJS.** 18-19 C.J.S., Corporations §§ 1 et seq.

SUBARTICLE D.

DERIVATIVE PROCEDURES.

- SEC.
- 79-4-7.40. Meaning of "derivative proceeding", "shareholder" in subarticle.
 - 79-4-7.41. Who may commence or maintain derivative proceeding.
 - 79-4-7.42. Prerequisites to commencing derivative proceeding.
 - 79-4-7.43. Stay of proceeding when corporation inquires into allegations.
 - 79-4-7.44. Determination by independent directors or independent persons whether maintenance of proceeding is in best interests of corporation.
 - 79-4-7.45. Court approval for settlement or discontinuance.
 - 79-4-7.46. Expenses and attorney fees.

- 79-4-7.47. Law applicable in derivative proceedings involving foreign corporations.
79-4-7.48. Shareholder action to appoint custodian or receiver.

§ 79-4-7.40. Meaning of “derivative proceeding”, “shareholder” in subarticle.

In Sections 79-4-7.41 through 79-4-7.47:

(1) “Derivative proceeding” means a civil suit in the right of a domestic corporation or, to the extent provided in Section 79-4-7.47, in the right of a foreign corporation.

(2) “Shareholder” includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner’s behalf.

SOURCES: Laws, 1987, ch. 486, § 7.40; Laws, 1993, ch. 368, § 3, eff from and after July 1, 1993.

JUDICIAL DECISIONS

I. Under Current Law.

1. Derivative claim versus individual recovery.
- 2.-10. [Reserved for future use.]

II. Under Former § 79-3-93.

11. In general.

I. Under Current Law.

1. Derivative claim versus individual recovery.

Chancellor erred by failing to transfer a dispute over contractual obligations to a circuit court because a former member did not bring most of the claims derivatively under Miss. Code Ann. § 79-4-7.40 since he was seeking a personal recovery, and the proper procedures were not followed; moreover, the parties would have been deprived of the right to a jury trial if transfer was not obtained. ERA Franchise

Sys. v. Mathis, 931 So. 2d 1278 (Miss. 2006).

2.-10. [Reserved for future use.]

II. Under Former § 79-3-93.

11. In general.

In an action by a savings and loan association against a former vice-president and members of the board of directors for \$26 million dollars in damages for alleged breach of fiduciary duty in the management of the association, the trial court properly rejected the defendants’ contention that the suit was barred due to the acquisition of the association by a successor corporation where the written bill of sale and assignment had the effect of transferring and assigning unto the successor corporation all properties, assets and choses in action of every kind and nature, including the present action. Liberty Sav. & Loan Ass’n v. Mitchell, 398 So. 2d 208 (Miss. 1981).

RESEARCH REFERENCES

ALR. Allowance of punitive damages in stockholder’s derivative action. 67 A.L.R.3d 350.

Right of corporation to discharge employee who asserts right as stockholder. 84 A.L.R.3d 1107.

Negligence, nonfeasance, or ratification of wrongdoing as excusing demand on directors as prerequisite to bringing of

stockholder’s derivative suit on behalf of corporation. 99 A.L.R.3d 1034.

Propriety of termination of properly initiated derivative action by “independent committee” appointed by board of directors whose actions (or inaction) are under attack. 22 A.L.R.4th 1206.

Construction, as to terms and conditions, of state statute or rule providing for

voluntary dismissal without prejudice upon such terms and conditions as state court deems proper. 34 A.L.R.4th 778.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Notice to shareholders and court approval of dismissal or compromise of derivative actions, under Rule 23.1 of Federal Rules of Civil Procedure. 26 A.L.R. Fed. 465.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 1934, 1935 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 161 et seq., 191 et seq., 201 et seq., 221 et seq., 354, 441.

11A Am. Jur. Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2051 et seq.

CJS. 18 C.J.S., Corporations §§ 612-627.

Law Reviews. DuBose, Whose corporation is it, anyway? Abolishing the futility exception in derivative litigation. 12 Miss. C. L. Rev. 197, Fall, 1991.

§ 79-4-7.41. Who may commence or maintain derivative proceeding.

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

SOURCES: Laws, 1993, ch. 368, § 4, eff from and after July 1, 1993.

Cross References — Derivative proceeding defined for purposes of this subarticle, see § 79-4-7.40.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2007 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 161 et seq. (complaints

and other forms, shareholders' derivative actions).

§ 79-4-7.42. Prerequisites to commencing derivative proceeding.

No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety (90) days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

SOURCES: Laws, 1993, ch. 368, § 5, eff from and after July 1, 1993.

Cross References — Derivative proceeding defined for purposes of this subarticle, see § 79-4-7.40.

JUDICIAL DECISIONS

1. No futility exception.

Miss. Code Ann. § 79-4-7.42 is unambiguous and does not contain an exception for futility. *Speetjens v. Malaco Inc.*, 929 So. 2d 303 (Miss. 2006).

Shareholders alleged that a corporation's directors breached their fiduciary duties, usurped corporate opportunities, and awarded themselves excessive sala-

ries and extravagant bonuses; their derivative suit against the corporation and directors was properly dismissed because, before filing suit, they failed to make a written demand on the corporation to take suitable action, as required by Miss. Code Ann. § 79-4-7.42, and that statute did not contain an exception for futility. *Speetjens v. Malaco Inc.*, 929 So. 2d 303 (Miss. 2006).

RESEARCH REFERENCES

ALR. Negligence, nonfeasance, or ratification of wrongdoing as excusing demand on directors as prerequisite to bringing of stockholder's derivative suit on behalf of corporation. 99 A.L.R.3d 1034.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 1959 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 161 et seq. (complaints and other forms, shareholders' derivative actions).

§ 79-4-7.43. Stay of proceeding when corporation inquires into allegations.

If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

SOURCES: Laws, 1993, ch. 368, § 6, eff from and after July 1, 1993.

Cross References — This section, not foreign law, to govern matters arising hereunder in derivative proceeding involving foreign corporation, see § 79-4-7.47.

§ 79-4-7.44. Determination by independent directors or independent persons whether maintenance of proceeding is in best interests of corporation.

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (b) or (e) has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e), the determination in subsection (a) shall be made by:

(1) A majority vote of qualified directors present at a meeting of the board of directors if the qualified directors constitute a quorum; or

(2) A majority vote of a committee consisting of two (2) or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

(c) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either (1) that a majority of the board of directors did not consist of qualified directors at the time the determination was made or (2) that the requirements of subsection (a) have not been met.

(d) If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met; if not, the corporation shall have the burden of proving that the requirements of subsection (a) have been met.

(e) Upon motion by the corporation, the court may appoint a panel of one or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

SOURCES: Laws, 1993, ch. 368, § 7; Laws, 2006, ch. 429, § 4, eff from and after July 1, 2006.

Editor's Note — A typographical error in a statutory reference in (a) has been corrected by substituting “subsection (b) or (e)” for “subsection (b) or (f).”

Cross References — Qualified director defined, see § 79-4-1.43.

Derivative proceeding defined for purposes of this subarticle, see § 79-4-7.40.

RESEARCH REFERENCES

ALR. Propriety of termination of properly initiated derivative action by “independent committee” appointed by board of directors whose actions (or inaction) are under attack. 22 A.L.R.4th 1206.

§ 79-4-7.45. Court approval for settlement or discontinuance.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

SOURCES: Laws, 1993, ch. 368, § 8, eff from and after July 1, 1993.

Cross References — Derivative proceeding defined for purposes of this subarticle, see § 79-4-7.40.

This section, not foreign law, to govern matters arising hereunder in derivative proceeding involving foreign corporation, see § 79-4-7.47.

RESEARCH REFERENCES

ALR. Notice to shareholders and court approval of dismissal or compromise of derivative actions, under Rule 23.1 of Federal Rules of Civil Procedure. 26 A.L.R. Fed. 465.

Am Jur. 19 Am. Jur. 2d, Corporations § 2127.

§ 79-4-7.46. Expenses and attorney fees.

On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses (including attorney fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

(2) Order the plaintiff to pay any defendant's reasonable expenses (including attorney fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

SOURCES: Laws, 1993, ch. 368, § 9, eff from and after July 1, 1993.

Cross References — Derivative proceeding defined for purposes of this subarticle, see § 79-4-7.40.

This section, not foreign law, to govern matters arising hereunder in derivative proceeding involving foreign corporation, see § 79-4-7.47.

JUDICIAL DECISIONS

1. In general.

Although a shareholder may bring suit against other shareholders in the name of the corporation, there is no authority whereby the suit can be prosecuted at the cost of the corporation unless the action is successful. *Wyssbrod v. Wittjen*, 798 So. 2d 352 (Miss. 2001).

The statute does not provide authority to order an attorney to disgorge corporate funds improperly paid as attorney's fees. *Wyssbrod v. Wittjen*, 798 So. 2d 352 (Miss. 2001).

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2147 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 221 et seq. (petition,

notice, motion, affidavit and order, for attorney's fees).

§ 79-4-7.47. Law applicable in derivative proceedings involving foreign corporations.

In any derivative proceeding in the right of a foreign corporation, the matters covered by this subchapter shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for Sections 79-4-7.43, 79-4-7.45 and 79-4-7.46.

SOURCES: Laws, 1993, ch. 368, § 10, eff from and after July 1, 1993.

Cross References — Derivative proceeding defined for purposes of this subarticle, see § 79-4-7.40.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations
§ 2052.

§ 79-4-7.48. Shareholder action to appoint custodian or receiver.

(a) The chancery court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation (authorized to transact business in this state) as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers,

(1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(2) A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

SOURCES: Laws, 2007, ch. 361, § 7, eff from and after July 1, 2007.

ARTICLE 8.

DIRECTORS AND OFFICERS.

Subarticle A.	Board of Directors.....	79-4-8.01
Subarticle B.	Meetings and Action of the Board.....	79-4-8.20
Subarticle C.	Standards of Conduct.....	79-4-8.30
Subarticle D.	Officers.....	79-4-8.40
Subarticle E.	Indemnification.....	79-4-8.50
Subarticle F.	Director's Conflicts of Interest.....	79-4-8.60

SUBARTICLE A.

BOARD OF DIRECTORS.

SEC.

79-4-8.01.	Requirement for Board of Directors; exception; duties of Board.
79-4-8.02.	Qualifications of directors.
79-4-8.03.	Number and election of directors.
79-4-8.04.	Election of directors by authorized classes of shares.
79-4-8.05.	Terms of directors generally.
79-4-8.06.	Staggered terms for directors.
79-4-8.07.	Resignation of directors.
79-4-8.08.	Removal of directors by shareholders.
79-4-8.09.	Removal of directors by judicial proceeding.
79-4-8.10.	Vacancy on board.
79-4-8.11.	Compensation of directors.

§ 79-4-8.01. Requirement for Board of Directors; exception; duties of Board.

(a) Except as provided in Section 79-4-7.32, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under Section 79-4-7.32.

SOURCES: Laws, 1987, ch. 486, § 8.01; Laws, 1988, ch. 368, § 7; Laws, 1993, ch. 368, § 2; Laws, 2001, ch. 435, § 6, eff from and after July 1, 2001.

Cross References — Authority of committees to exercise authority of board of directors under this section, see § 79-4-8.25.

Voluntary dissolution of corporation by board of directors and shareholders, see § 79-4-14.02.

Revocation of dissolution, see § 79-4-14.04.

Deadlock among shareholders in electing directors as grounds for judicial dissolution of corporation, see § 79-4-14.30.

Director of corporation entitled to inspect and copy the books, records and documents of the corporation, see § 79-4-16.05.

Requirement for and duties of board of directors under Mississippi Nonprofit Corporation Act, see § 79-11-231.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
2. Dealing by director in own stock.
- 3.-10. [Reserved for future use.]

II. Under Former § 79-3-67.

11. In general.

I. Under Current Law.

1. In general.

In a close corporation where a majority stockholder stands to benefit as a controlling stockholder, the majority's action must be "intrinsically fair" to the minority interest. Thus, stockholders in close corporations must bear towards each other the same relationship of trust and confidence which prevails in partnerships, rather than resort to statutory defenses. This does not mean that directors, executive officers and stockholders are not required to adhere to the corporate statutes; rather, blind adherence to corporate statutes may not be used to circumvent the corporation's by-laws, charter or various agreements, such as a stock redemption agreement, because of the "intrinsically fair" standard that is now adopted. *Fought v. Morris*, 543 So. 2d 167 (Miss. 1989).

2. Dealing by director in own stock.

Generally, a director violates no duty by dealing in his or her own stock on his or her own account. This rule is not applica-

ble, however, when there is a showing that a closely-held corporation has a practice of purchasing its own stock, or that it ever contemplated doing so, as evidenced by a stock redemption agreement, in order to maintain proportionate control of the corporation. *Fought v. Morris*, 543 So. 2d 167 (Miss. 1989).

3.-10. [Reserved for future use.]

II. Under Former § 79-3-67.

11. In general.

The management of a corporation is vested in its board of directors and not the stockholders. *Harper v. Harper*, 491 So. 2d 189 (Miss. 1986).

If owners of stock in a restaurant were also directors of the corporation, they may have had the power to obtain a loss payable clause in an insurance policy on the restaurant, such clause naming them as payees of insurance proceeds to the extent of the amount of their actual interest in the restaurant. *Cherokee Ins. Co. v. Koenenn*, 536 F.2d 585 (5th Cir. 1976).

A director of a corporation occupies a fiduciary position toward creditors, having a better knowledge of the condition of the company than have other creditors, and should not be permitted to use that position to benefit himself at their expense or to grant himself preferences or advantages in the payment of his claims over other creditors. *Cooper v. Mississippi Land Co.*, 220 So. 2d 302 (Miss. 1969).

RESEARCH REFERENCES

ALR. Provision authorizing directors to fill vacancies as applicable to newly created directorships. 6 A.L.R.2d 174.

Purchase of claims against corporation by officer or director thereof. 13 A.L.R.2d 1172.

Corporation as necessary or proper party defendant in proceedings to determine validity of election or appointment of corporate director or officer. 21 A.L.R.2d 1048.

Validity of security for contemporaneous loan to corporation by officer, director, or stockholder. 31 A.L.R.2d 663.

Validity of contract between corporations as affected by directors or officers in common. 33 A.L.R.2d 1060.

Statute of frauds: promise by stockholder, officer, or director to pay debt of corporation. 35 A.L.R.2d 906.

Allowance, as taxable costs, of witness fees and mileage of stockholders, directors, officers, and employees of corporate litigant. 57 A.L.R.2d 1243.

Personal liability of one who signs or indorses without qualification commercial paper of corporation. 82 A.L.R.2d 424.

Construction and effect of corporate by-laws or articles relating to change in number of directors. 3 A.L.R.3d 623.

Duty and liability of closely held corporation, its directors, officers, or majority stockholders, in acquiring stock of minority shareholder. 7 A.L.R.3d 500.

Validity of agreement, in conjunction with sale of corporate shares that majority of directors will be replaced by purchaser's designees. 13 A.L.R.3d 361.

Liability of corporate directors for negligence in permitting mismanagement or defalcations by officers or employees. 25 A.L.R.3d 941.

Liability of corporate directors or officers for negligence in permitting conversion of property of third persons by corporation. 29 A.L.R.3d 660.

Persons liable under statutes imposing, upon directors, officers, or trustees of a corporation, personal liability for its debts on account of their failure to file or publish reports, required by law, as to corporate matters. 39 A.L.R.3d 428.

Liability of corporate officer or director for commission or compensation received from third person in connection with that person's transaction with corporation. 47 A.L.R.3d 373.

Who has possession, custody, or control of corporate books or records for purposes of order to produce. 47 A.L.R.3d 676.

Personal liability of officers or directors or corporation on corporate checks issued against insufficient funds. 47 A.L.R.3d 1250.

Insurance: construction of policy or bond indemnifying directors or officers of corporations for expenses incurred in defending actions brought against them in their capacity as such. 49 A.L.R.3d 1250.

Test in stockholders' actions as to reasonableness of compensation of corporate officers who as directors determine own compensation. 53 A.L.R.3d 358.

Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 27 A.L.R.4th 387.

Liability of corporate director, officer, or employee for tortious interference with corporation's contract with another. 72 A.L.R.4th 492.

Time for bringing suit to recover insider short-swing profits under sec. 16(b) of the Securities Exchange Act of 1934 (15 USCS sec. 78p(b)). 67 A.L.R. Fed. 849.

Proper measure and elements of recovery for insider short-swing transaction. 86 A.L.R. Fed. 16.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1166 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1011 et seq., 74:1312 et seq.

9 Am. Jur. Proof of Facts 2d 57, Corporate Officer or Director as Alter Ego of Corporation.

CJS. 19 C.J.S., Corporations §§ 822 et seq.

Law Reviews. Transactions between a corporation and its directors: Where does

Mississippi stand? 52 Miss. L. J. 877, December, 1982.

Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-8.02. Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

SOURCES: Laws, 1987, ch. 486, § 8.02; Laws, 1988, ch. 368, § 8, eff from and after passage (approved April 18, 1988).

Cross References — Qualifications of directors under Mississippi Nonprofit Corporation Act, see § 79-11-231.

RESEARCH REFERENCES

ALR. Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corpo-

rate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1176 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1015 et seq.

§ 79-4-8.03. Number and election of directors.

(a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased, from time to time, by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(c) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under Section 79-4-8.06.

SOURCES: Laws, 1987, ch. 486, § 8.03; Laws, 2001, ch. 435, § 7, eff from and after July 1, 2001.

Cross References — Number and election of directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-235, 79-11-237.

RESEARCH REFERENCES

ALR. Corporation as necessary or proper party defendant in proceedings to determine validity of election or appointment of corporate director or officer. 21 A.L.R.2d 1048.

Construction, application, and effect of constitutional provisions or statutes relating to cumulative voting of stock for corporate directors. 43 A.L.R.2d 1322.

Construction and effect of corporate by-laws or articles relating to change in number of directors. 3 A.L.R.3d 623.

Validity of agreement in conjunction with sale of corporate shares that majority

of directors will be replaced by purchaser's designees. 13 A.L.R.3d 361.

Corporations: casting ballots after closing of polls. 41 A.L.R.3d 234.

Corporations: power of inspectors of election relating to irregular or conflicting proxies. 44 A.L.R.3d 1443.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1174, 1175, 1183 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1011-74:7013, 74:1312-74:1314, 74:1316-74:1321.

CJS. 19 C.J.S., Corporations §§ 797 et seq.

§ 79-4-8.04. Election of directors by authorized classes of shares.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class (or classes) of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

SOURCES: Laws, 1988, ch. 368, § 12, eff from and after passage (approved April 18, 1988).

Cross References — Authorizing shares generally, see § 79-4-6.01.

Election of directors generally, see § 79-4-8.03.

Number and election of directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-235, 79-11-237.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1184, 1185, 1187 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:971-74:975, 74:1023.

§ 79-4-8.05. Terms of directors generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under Section 79-4-8.06.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

SOURCES: Laws, 1987, ch. 486, § 8.05, eff from and after January 1, 1988.

Cross References — Vacancy on board generally, see § 79-4-8.10.

Terms of office of directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-239, 79-11-241.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1212-1217. **CJS.** 19 C.J.S., Corporations §§ 811-814.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1026, 74:1027.

§ 79-4-8.06. Staggered terms for directors.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half ($\frac{1}{2}$) or one-third ($\frac{1}{3}$) of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

SOURCES: Laws, 1987, ch. 486, § 8.06 eff from and after January 1, 1988; Laws, 2001, ch. 435, § 8, eff from and after July 1, 2001.

Cross References — Election of directors whose terms of office are not staggered pursuant to this section, see § 79-4-8.03.

Terms of directors whose terms of office are not staggered pursuant to this section, see § 79-4-8.05.

Terms of office of directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-239, 79-11-241.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1215, 1216.

§ 79-4-8.07. Resignation of directors.

(a) A director may resign at any time by delivering written notice to the board of directors, its chairman or to the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

SOURCES: Laws, 1987, ch. 486, § 8.07 eff from and after January 1, 1988.

Cross References — Term of director elected to fill vacancy, see § 79-4-8.05.

Authority to fill vacancy that will occur at specified later date before vacancy occurs, see § 79-4-8.10.

Resignation of director under Mississippi Nonprofit Corporation Act, see § 79-11-243.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1233-1240.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1031, 74:1341-74:1349.

CJS. 19 C.J.S., Corporations § 815.

§ 79-4-8.08. Removal of directors by shareholders.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing him and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

SOURCES: Laws, 1987, ch. 486, § 8.08; Laws, 1988, ch. 368, § 9, eff from and after passage (approved April 18, 1988).

Cross References — Voting groups, see §§ 79-4-7.25, 79-4-7.26.

Cumulative voting generally, see § 79-4-7.28.

Removal of director by judicial proceeding, see § 79-4-8.09.

Removal of directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-245 through 79-11-249.

RESEARCH REFERENCES

ALR. Validity of agreement in conjunction with sale of corporate shares that majority of directors will be replaced by purchaser's designees. 13 A.L.R.3d 361.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1247 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1032, 74:1332-74:1335.

CJS. 19 C.J.S., Corporations § 817.

Law Reviews. Corporations. 25 SC L Rev 422.

§ 79-4-8.09. Removal of directors by judicial proceeding.

(a) The chancery court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent (10%) of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation and (2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

SOURCES: Laws, 1987, ch. 486, § 8.09 eff from and after January 1, 1988.

Cross References — Term of director elected to fill vacancy, see § 79-4-8.05.

Removal of director by shareholders, see § 79-4-8.08.

Removal of directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-245 through 79-11-249.

RESEARCH REFERENCES

ALR. Relief other than by dissolution in cases of intracorporate deadlock or dissension. 34 A.L.R.4th 13.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1247-1253.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1331-74:1335.

CJS. 19 C.J.S., Corporations § 817.

§ 79-4-8.10. Vacancy on board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under Section 79-4-8.07(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

SOURCES: Laws, 1987, ch. 486, § 8.10; Laws, 1988, ch. 368, § 10, eff from and after passage (approved April 18, 1988).

Cross References — Voting groups, see §§ 79-4-7.25, 79-4-7.26.

Election of directors whose terms of office are not staggered, see § 79-4-8.03.

Term of director elected to fill vacancy, see § 79-4-8.05.

Staggered terms of directors, see § 79-4-8.06.

Committees created by board of directors not authorized to fill vacancies on the board of directors, see § 79-4-8.25.

Filling vacancy on board under Mississippi Nonprofit Corporation Act, see § 79-11-251.

RESEARCH REFERENCES

ALR. Provision authorizing directors to fill vacancies as applicable to newly created directorships. 6 A.L.R.2d 174.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1035-74:1037.

Am Jur. 18B Am. Jur. 2d, Corporations § 1218.

CJS. 19 C.J.S., Corporations § 797.

§ 79-4-8.11. Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

SOURCES: Laws, 1987, ch. 486, § 8.11, eff from and after January 1, 1988.

Cross References — Compensation of directors under Mississippi Nonprofit Corporation Act, see § 79-11-253.

RESEARCH REFERENCES

ALR. Reasonableness of compensation paid to officers or employees, so as to warrant deduction thereof in computing employer's income tax. 10 A.L.R.3d 125.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1091-74:1094, 74:1463.

Test of stockholders' actions as to reasonableness of compensation of corporate officers who as directors determine own compensation. 53 A.L.R.3d 358.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 351 et seq.

4 Am. Jur. Proof of Facts 2d 425, Reasonableness of Corporate Officer's Compensation.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1655 et seq.

SUBARTICLE B.

MEETINGS AND ACTION OF THE BOARD.

SEC.

- 79-4-8.20. Meetings.
- 79-4-8.21. Action without meeting.
- 79-4-8.22. Notice of meeting.
- 79-4-8.23. Waiver of notice.
- 79-4-8.24. Quorum and voting.
- 79-4-8.25. Committees.

§ 79-4-8.20. Meetings.

(a) The board of directors may hold regular or special meetings in or out of this state.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

SOURCES: Laws, 1987, ch. 486, § 8.20, eff from and after January 1, 1988.

Cross References — Applicability of this section to committees of board of directors and their members, see § 79-4-8.25.

Deadlock among directors as grounds for judicial dissolution of corporation, see § 79-4-14.30.

Meetings and actions of the board under Mississippi Nonprofit Corporation Act, see §§ 79-11-255 through 79-11-265.

RESEARCH REFERENCES

ALR. Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1274, 1275.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1071 et seq.

9 Am. Jur. Proof of Facts 2d 57, Corporate Officer or Director as Alter Ego of Corporation.

CJS. 19 C.J.S., Corporations § 826.

§ 79-4-8.21. Action without meeting.

(a) Action required or permitted by Section 79-4-1.01 et seq. to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action taken and delivers it to the corporation.

(b) Action taken under this section is the act of the board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A consent may be withdrawn by a revocation signed by the director and received by the corporation prior to receipt by the corporation of unrevoked written consents signed by all the directors.

(c) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

SOURCES: Laws, 1987, ch. 486, § 8.21; Laws, 2001, ch. 435, § 9, eff from and after July 1, 2001.

Cross References — Applicability of this section to committees of board of directors and their members, see § 79-4-8.25.

Meetings and actions of the board under Mississippi Nonprofit Corporation Act, see §§ 79-11-255 through 79-11-265.

JUDICIAL DECISIONS

1. In general.

One member of the board of directors of a corporation did not have authority to hire an attorney and pay for his services from corporate funds where the record contained no documentation of a determi-

nation or resolution that an action be filed on behalf of the corporation, whether in the form of minutes from a directors' meeting or written consents signed by the members of the board. *Wyssbrod v. Wittjen*, 798 So. 2d 352 (Miss. 2001).

RESEARCH REFERENCES

ALR. Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1256-1260.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1073, 74:1077, 74:1078.

9 Am. Jur. Proof of Facts 2d 57, Corporate Officer or Director as Alter Ego of Corporation.

CJS. 19 C.J.S., Corporations § 825.

§ 79-4-8.22. Notice of meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two (2) days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

SOURCES: Laws, 1987, ch. 486, § 8.22, eff from and after January 1, 1988.

Cross References — Applicability of this section to committees of board of directors and their members, see § 79-4-8.25.

Meetings and actions of the board under Mississippi Nonprofit Corporation Act, see §§ 79-11-255 through 79-11-265.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1262 et seq.
 6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1431 et seq.

CJS. 19 C.J.S., Corporations § 827.

§ 79-4-8.23. Waiver of notice.

(a) A director may waive any notice required by Sections 79-4-1.01 et seq., the articles of incorporation or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

SOURCES: Laws, 1987, ch. 486, § 8.23, eff from and after January 1, 1988.

Cross References — Meetings and actions of the board under Mississippi Nonprofit Corporation Act, see §§ 79-11-255 through 79-11-265.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1267-1269.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1074-74:1076, 74:1081 (atten-

dance by directors as waiver of notice of meeting), 74:1435-74:1437.

CJS. 19 C.J.S., Corporations § 827.

§ 79-4-8.24. Quorum and voting.

(a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third ($\frac{1}{3}$) of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

SOURCES: Laws, 1987, ch. 486, § 8.24; Laws, 1996, ch. 459, § 2, eff from and after January 1, 1997.

Cross References — Applicability of this section to committees of board of directors and their members, see § 79-4-8.25.

Deadlock among directors as grounds for judicial dissolution of corporation, see § 79-4-14.30.

Meetings and actions of the board under Mississippi Nonprofit Corporation Act, see §§ 79-11-255 through 79-11-265.

RESEARCH REFERENCES

ALR. Construction, application, and effect of constitutional provisions or statutes relating to cumulative voting of stock for corporate directors. 43 A.L.R.2d 1322.

Liability of corporate director, officer, or employee for tortious interference with corporation's contract with another. 72 A.L.R.4th 492.

Validity, construction, and effect of provision in charter or bylaw requiring supermajority vote. 80 A.L.R.4th 667.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1278 et seq.

CJS. 19 C.J.S., Corporations §§ 801, 834, 835.

§ 79-4-8.25. Committees.

(a) Unless this chapter, the articles of incorporation or the bylaws provide otherwise, a board of directors may create one or more committees and appoint one or more members of the board of directors to serve on any such committee.

(b) Unless this chapter otherwise provides, the creation of a committee and appointment of members to it must be approved by the greater of (1) a majority of all the directors in office when the action is taken or (2) the number of directors required by the articles of incorporation or bylaws to take action under Section 79-4-8.24.

(c) Sections 79-4-8.20 through 79-4-8.24 apply both to committees of the board and their members.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under Section 79-4-8.01.

(e) A committee may not, however:

(1) Authorize or approve distributions, except according to a formula or method or within limits prescribed by the board of directors;

(2) Approve or propose to shareholders action that Section 79-4-1.01 et seq. requires to be approved by shareholders;

(3) Fill vacancies on the board of directors, or subject to subsection (g), on any of its committees; or

(4) Adopt, amend or repeal bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 79-4-8.30.

(g) The board of directors may appoint one or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

SOURCES: Laws, 1987, ch. 486, § 8.25; Laws, 2001, ch. 435, § 10, eff from and after July 1, 2001.

Cross References — Meetings and actions of the board under Mississippi Nonprofit Corporation Act, see §§ 79-11-255 through 79-11-265.

RESEARCH REFERENCES

ALR. Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1310 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1061-74:1063.

9 Am. Jur. Proof of Facts 2d 57, Corporate Officer or Director as Alter Ego of Corporation.

CJS. 19 C.J.S., Corporations § 847.

SUBARTICLE C.

STANDARDS OF CONDUCT.

SEC.

79-4-8.30. General standards for directors.

79-4-8.31. Standards of liability for directors.

79-4-8.33. Liability for unlawful distributions.

§ 79-4-8.30. General standards for directors.

(a) Each member of the board of directors, when discharging the duties of a director, shall act:

(1) In good faith, and

(2) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(c) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on the performance by any of the persons specified in subsection (e)(1) or subsection (e)(3) to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

(d) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (e).

(e) A director is entitled to rely, in accordance with subsection (c) or (d), on:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(2) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence; or

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(f) For purposes of this section, a director, in determining what he reasonably believes to be in the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

(1) The interests of the corporation's employees, suppliers, creditors and customers;

(2) The economy of the state and nation;

(3) Community and societal considerations;

(4) The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

SOURCES: Laws, 1987, ch. 486, § 8.30; Laws, 1990, ch. 538, § 5; Laws, 1999, ch. 471, § 1, eff from and after July 1, 1999.

Cross References — Creation of, delegation of authority to, or action by a committee as not constituting compliance by director with standards of conduct described in § 79-4-8.30, see § 79-4-8.25.

Liability of director who votes for or assents to unlawful distribution without complying with applicable standards of conduct described in § 79-4-8.30, see § 79-4-8.33.

Provisions governing directors' conflicts of interest, see § 79-4-8.60 through 79-4-8.63.

Dissolution of corporation as not subjecting corporation's directors and officers to standards of conduct different from those prescribed in this article, see § 79-4-14.05.

Misapplication or waste of corporate assets as ground for judicial dissolution of corporation, see § 79-4-14.30.

Directors acting in manner that is illegal, oppressive or fraudulent as grounds for judicial dissolution of corporation, see § 79-4-14.30.

General standards for directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-267 through 79-11-270.

JUDICIAL DECISIONS

1. In general.
2. Dealing by director in own stock.

1. In general.

In a close corporation where a majority stockholder stands to benefit as a controlling stockholder, the majority's action must be "intrinsically fair" to the minority interest. Thus, stockholders in close corporations must bear towards each other the same relationship of trust and confidence which prevails in partnerships, rather than resort to statutory defenses. This does not mean that directors, executive officers and stockholders are not required to adhere to the corporate statutes; rather, blind adherence to corporate statutes may not be used to circumvent the corporation's by-laws, charter or various

agreements, such as a stock redemption agreement, because of the "intrinsically fair" standard that is now adopted. *Fought v. Morris*, 543 So. 2d 167 (Miss. 1989).

2. Dealing by director in own stock.

Generally, a director violates no duty by dealing in his or her own stock on his or her own account. This rule is not applicable, however, when there is a showing that a closely held corporation has a practice of purchasing its own stock, or that it ever contemplated doing so, as evidenced by a stock redemption agreement, in order to maintain proportionate control of the corporation. *Fought v. Morris*, 543 So. 2d 167 (Miss. 1989).

RESEARCH REFERENCES

ALR. Duty and liability of closely held corporation, its directors, officers, or majority stockholders, in acquiring stock of minority shareholder. 7 A.L.R.3d 500.

Liability of corporate directors for negligence in permitting mismanagement or defalcation by officers or employees. 25 A.L.R.3d 941.

Persons liable under statutes imposing, upon directors, officers, or trustees of a corporation, personal liability for its debts on account of their failure to file or publish reports, required by law, as to corporate matters. 39 A.L.R.3d 428.

Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

What business opportunities are in "line of business" of corporation for purposes of determining whether a corporate opportunity was presented. 77 A.L.R.3d 961.

Duty to disclose material facts to stock purchaser. 80 A.L.R.3d 13.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Availability of and time for bringing action against former director, officer, or stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Liability of corporate director, officer, or employee for tortious interference with corporation's contract with another. 72 A.L.R.4th 492.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1455 et seq.

9 Am. Jur. Proof of Facts 2d 57, Corporate Officer or Director as Alter Ego of Corporation.

CJS. 19 C.J.S., Corporations §§ 848 et seq.

Law Reviews. Smith, Recognition of the fiduciary duties of corporate directors and officers defending against change of control by tender offer. 7 Miss. C. L. Rev. 117, Spring, 1987.

Transactions between a corporation and its directors: Where does Mississippi stand? 52 Miss L. J. 877, December, 1982.

Robertson, The Law of Corporate Governance: Coming of Age in Mississippi? 65 Miss. L. J. 477, Spring, 1996.

§ 79-4-8.31. Standards of liability for directors.

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) Any provision in the articles of incorporation authorized by Section 79-4-2.02(b)(4) or the protection afforded by Section 79-4-8.61 for action taken in compliance with Section 79-4-8.62 or 79-4-8.63, if interposed as a bar to the proceeding by the director, does not preclude liability; and

(2) The challenged conduct consisted or was the result of:

(i) Action not in good faith; or

(ii) A decision

(A) Which the director did not reasonably believe to be in the best interests of the corporation, or

(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(iii) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation, and

(B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(iv) A sustained failure of the director to be informed about the business and affairs of the corporation, or other material failure of the director to discharge the oversight function; or

(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, shall also have the burden of establishing that:

(i) Harm to the corporation or its shareholders has been suffered, and

(ii) The harm suffered was proximately caused by the director's challenged conduct; or

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under Section 79-4-8.61(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of this act, such as the provisions governing the consequences of an unlawful distribution under Section 79-4-8.33 or a transactional interest under Section 79-4-8.61, or (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

SOURCES: Laws, 1999, ch. 471, § 2, eff from and after July 1, 1999.

Editor's Note — A prior § 79-4-8.31 Laws, [1987, ch. 486, § 8.31, eff from and after January 1, 1988] was repealed by Laws, 1990, ch. 538, § 10, eff from and after July 1, 1990. That section pertained to director's conflicts of interests. For provisions governing directors' conflicts of interest, see §§ 79-4-8.60 through 79-4-8.63.

Cross References — Limit on liability of directors for acts or omissions imposed by law, see § 79-4-7.32.

General standards for directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-267 through 79-11-270.

§ 79-4-8.33. Liability for unlawful distributions.

(a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to Section 79-4-6.40(a) or 79-4-14.09(a) is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 79-4-6.40(a) or 79-4-14.09(a) if the party asserting liability establishes that when taking the action the director did not comply with Section 79-4-8.30.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to:

(1) Contribution from every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of Section 79-4-6.40(a) or 79-4-14.09(a).

(c) A proceeding to enforce:

(1) The liability of a director under subsection (a) is barred unless it is commenced within two (2) years after the date (i) on which the effect of the distribution was measured under Section 79-4-6.40(e) or (g); (ii) as of which the violation of Section 79-4-6.40(a) occurred as the consequence of disregard of a restriction in the articles of incorporation; or (iii) on which the distribution of assets to shareholders under Section 79-4-14.09(a) was made; or

(2) Contribution or recoupment under subsection (b) is barred unless it is commenced within one (1) year after the liability of the claimant has been finally adjudicated under subsection (a).

SOURCES: Laws, 1987, ch. 486, § 8.33; Laws, 1988, ch. 369, § 4; Laws, 1999, ch. 471, § 3; Laws, 2001, ch. 435, § 11, eff from and after July 1, 2001.

Cross References — Liability for unlawful distributions under this section excepted from requirement that articles of incorporation set forth a provision eliminating or limiting liability of director or shareholders for money damages and a provision permitting or making obligatory indemnification of director for liability as defined in § 79-4-8.50(4), see § 79-4-2.02.

Directors acting in manner that is illegal, oppressive or fraudulent as grounds for judicial dissolution of corporation, see § 79-4-14.30.

Misapplication or waste of corporate assets as ground for judicial dissolution of corporation, see § 79-4-14.30.

Payment of claims and distribution of assets of dissolved corporations, see § 79-4-14.09.

General standards for directors under Mississippi Nonprofit Corporation Act, see §§ 79-11-267 through 79-11-270.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-91.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-91.

11. In general.

The fact that a direct remedy is given the creditors by the statute is not intended to deprive the corporation itself of

the right to hold an officer to account for breach of his duty to it. *In re Dalton Elec. Co.*, 7 F. Supp. 465 (S.D. Miss. 1934).

Bill in chancery against directors of insolvent bank charging them with liability for making a loan in excess of one-fifth of the bank's capital to a director after his resignation, on the grounds that the notes representing the loan were either signed or delivered while he was director, or that the loan had been agreed upon while he was director and the notes subsequently executed, was insufficient to show liability under former enactment of this section (§ 922, Code 1906), since bill affirmatively showed that borrower was not a

director at the time the loan was made. *Bramlette v. Joseph*, 111 Miss. 379, 71 So. 643 (1916).

RESEARCH REFERENCES

ALR. Personal liability of one who signs or indorses without qualification commercial paper of corporation. 82 A.L.R.2d 424.

Duty and liability of closely held corporation, its directors, officers, or majority stockholders, in acquiring stock of minority shareholder. 7 A.L.R.3d 500.

Liability of corporate directors for negligence in permitting mismanagement or defalcation by officers or employees. 25 A.L.R.3d 941.

Liability of corporate directors or officers for negligence in permitting conversion of property of third persons by corporation. 29 A.L.R.3d 660.

Persons liable under statutes imposing, upon directors, officers, or trustees of a corporation, personal liability for its debts on account of their failure to file or publish reports, required by law, as to corporate matters. 39 A.L.R.3d 428.

What amounts to participation by corporate officer or agent in illegal issuance of security, in order to impose liability upon him under state securities regulations. 44 A.L.R.3d 588.

Liability of corporate officer or director for commission or compensation received from third person in connection with that person's transaction with corporation. 47 A.L.R.3d 373.

Personal liability of officer or directors of corporation on corporate checks issued against insufficient funds. 47 A.L.R.3d 1250.

Test in stockholders' actions as to reasonableness of compensation of corporate officers who as directors determine their own compensation. 53 A.L.R.3d 358.

Liability of director or dominant shareholder for enforcing debt legally owed him by corporation. 56 A.L.R.3d 212.

Personal civil liability of officer or director of corporation for negligence of subor-

dinate employee causing personal injury or death of third person. 90 A.L.R.3d 916.

Validity of stockholders' agreement allegedly infringing on directors' management powers — modern cases. 15 A.L.R.4th 1078.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 27 A.L.R.4th 387.

Time for bringing suit to recover insider short-swing profits under sec. 16(b) of the Securities Exchange Act of 1934 (15 USCS sec. 78p(b)). 67 A.L.R. Fed. 849.

Proper measure and elements of recovery for insider short-swing transaction. 86 A.L.R. Fed. 16.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1455 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 162 et seq., 263.1 (complaint by judgment creditor against sole stockholder receiving distributions of corporate property causing corporation to become insolvent), 312 et seq.

8 Am. Jur. Proof of Facts 2d 193, Personal Liability of Corporate Officer on Promissory Note.

CJS. 19 C.J.S., Corporations §§ 848 et seq.

Law Reviews. Smith, Recognition of the fiduciary duties of corporate directors and officers defending against change of control by tender offer. 7 Miss. C. L. Rev. 117, Spring, 1987.

Transactions between a corporation and its directors: Where does Mississippi stand? 52 Miss L. J. 877, December, 1982.

SUBARTICLE D.

OFFICERS.

SEC.

- 79-4-8.40. Required offices.
- 79-4-8.41. Duties of officers.
- 79-4-8.42. Standards of conduct for officers.
- 79-4-8.43. Resignation and removal of officers.
- 79-4-8.44. Contract rights of officers.

§ 79-4-8.40. Required offices.

(a) A corporation has the offices described in its bylaws or designated by the board of directors in accordance with the bylaws.

(b) The board of directors may elect individuals to fill one or more offices of the corporation. A duly authorized officer may appoint one or more officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for maintaining and authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one (1) office in a corporation.

SOURCES: Laws, 1987, ch. 486, § 8.40; Laws, 1991, ch. 320 § 1; Laws, 2001, ch. 435, § 12, eff from and after July 1, 2001.

Cross References — Definition of "secretary" see § 79-4-1.40.

Officers of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-271 through 79-11-279.

RESEARCH REFERENCES

- Am Jur.** 18B Am. Jur. 2d, Corporations §§ 1166-1169.
- CJS.** 19 C.J.S., Corporations §§ 796, 838-844.
- 6 Am. Jur. Legal Forms 2d, Corporations §§ 74:56, 74:934, 74:1024.

§ 79-4-8.41. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

SOURCES: Laws, 1987, ch. 486, § 8.41, eff from and after January 1, 1988.

Cross References — Officers of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-271 through 79-11-279.

JUDICIAL DECISIONS

1. In general.

A corporate officer's duties of care and loyalty extend to pledgees of corporate

shares as well as to shareholders. *Gibson v. Manuel*, 534 So. 2d 199 (Miss. 1988).

RESEARCH REFERENCES

ALR. Power of president of corporation to have litigation instituted by it where board of directors has failed or refused to grant permission. 10 A.L.R.2d 701.

Purchase of claims against corporation by officer or director thereof. 13 A.L.R.2d 1172.

Purposes for which stockholder or officer may exercise right to examine corporate books and records. 15 A.L.R.2d 11.

Estoppel of stockholder to recover back or to secure restoration of compensation of corporate officers claimed to be exorbitant or unauthorized. 16 A.L.R.2d 467.

Right of corporate officer to purchase corporate assets from corporation. 24 A.L.R.2d 71.

Power of corporate officer to hire employees for life. 28 A.L.R.2d 929.

Validity of contract between corporations as affected by directors or officers in common. 33 A.L.R.2d 1060.

Authority of officer or agent to bind corporation as guarantor or surety. 34 A.L.R.2d 290.

Authority of agent to indorse and transfer commercial paper. 37 A.L.R.2d 453.

Construction of "net profits," "earnings," or the like, in provision for profit-sharing bonus for corporate officers or employees. 49 A.L.R.2d 1129.

Power of particular officer or agent of business corporation to bind it by a donation to a charity or similar institution. 50 A.L.R.2d 447.

Authority of president to subordinate corporation's claim, assignment, lien, or the like. 53 A.L.R.2d 1421.

Authority of corporate officers to mortgage or pledge corporate personal property. 62 A.L.R.2d 712.

Power of secretary or treasurer of corporation to institute litigation for it. 64 A.L.R.2d 900.

Power of president of corporation to commence or to carry on arbitration proceedings. 65 A.L.R.2d 1321.

Right of corporate officer to recover compensation for period between original improper discharge and subsequent legal discharge. 82 A.L.R.2d 965.

Recovery back by employer of compensation paid to employee as result of mistake or the employee's fraud. 88 A.L.R.2d 1437.

Power and authority of president of business corporation to execute commercial paper. 96 A.L.R.2d 549.

Duty and liability of closely held corporation, its directors, officers, or majority stockholders, in acquiring stock of minority shareholder. 7 A.L.R.3d 500.

Liability of corporate directors for negligence in permitting mismanagement or defalcations by officers or employees. 25 A.L.R.3d 941.

Liability of corporate directors or officers for negligence in permitting conversion of property of third persons by corporation. 29 A.L.R.3d 660.

Persons liable under statutes imposing, upon directors, officers, or trustees of a corporation, personal liability for its debts on account of their failure to file or publish reports, required by law, as to corporate matters. 39 A.L.R.3d 428.

What amounts to participation by corporate officer or agent in illegal issuance of security, in order to impose liability upon him under state securities regulations. 44 A.L.R.3d 588.

Liability of corporate officer or director for commission or compensation received from third person in connection with that person's transaction with corporation. 47 A.L.R.3d 373.

Insurance: construction of policy or bond indemnifying directors or officers of corporation for expenses incurred in defending actions brought against them in their capacity as such. 49 A.L.R.3d 1250.

Test in stockholders' actions as to reasonableness of compensation of corporate

officers who as directors determine their own compensation. 53 A.L.R.3d 358.

Payment of premiums by corporation on corporate officer's life insurance as affecting right to policy. 56 A.L.R.3d 1086.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 27 A.L.R.4th 387.

Liability of corporate director, officer, or employee for tortious interference with

corporation's contract with another. 72 A.L.R.4th 492.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1176, 1177, 1183, 1316 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1017, 74:1047 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 312 et seq.

9 Am. Jur. Proof of Facts 2d 57, Corporate Officer or Director as Alter Ego of Corporation.

CJS. 19 C.J.S., Corporations §§ 796, 807, 838 et seq.

Law Reviews. Smith, Recognition of the fiduciary duties of corporate directors and officers defending against change of control by tender offer. 7 Miss. C. L. Rev. 117, Spring, 1987.

§ 79-4-8.42. Standards of conduct for officers.

(a) An officer, when performing in such capacity, shall act:

(1) In good faith;

(2) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) In discharging those duties an officer, who does not have knowledge that makes reliance unwarranted, is entitled to rely on:

(1) The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(2) Information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters (i) within the particular person's professional or expert competence or (ii) as to which the particular person merits confidence.

(c) An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer, if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of Section 79-4-8.31 that have relevance.

SOURCES: Laws, 1987, ch. 486, § 8.42; Laws, 1999, ch. 471, § 4, eff from and after July 1, 1999.

Cross References — Indemnification of officers, see § 79-4-8.56.

Dissolution of corporation as not subjecting corporation's directors and officers to standards of conduct different from those prescribed in this article, see § 79-4-14.05.

Misapplication or waste of corporate assets as ground for judicial dissolution of corporation, see § 79-4-14.30.

Bank officer and director standard of care, see § 81-5-105.

Officers of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-271 through 79-11-279.

JUDICIAL DECISIONS

1. In general.
2. Duties where close corporation.

1. In general.

Alleged contributory negligence of other bank officers was not defense to branch bank's loan officer's breach of duty of care to bank. *Omnibank of Mantee v. United S. Bank*, 607 So. 2d 76 (Miss. 1992).

Alleged inexperience or lack of skill and training of branch bank's loan officer did not protect him from liability to parent for breach of fiduciary duties in making loans. *Omnibank of Mantee v. United S. Bank*, 607 So. 2d 76 (Miss. 1992).

Chief operating official at branch bank who had substantial discretionary authority was "officer" of bank, although bank's board of directors had not elected him. *Omnibank of Mantee v. United S. Bank*, 607 So. 2d 76 (Miss. 1992).

Under "business judgment rule" director or officer who makes business judgment in good faith fulfills duty of care if director or officer: is not interested in subject of business judgment to extent director or officer reasonably believes to be appropriate under circumstances; and rationally believes that business judgment is in best interests of corporation. *Omnibank of Mantee v. United S. Bank*, 607 So. 2d 76 (Miss. 1992).

Person charging corporate officer with breach of his or her duty of care has

burden of production and persuasion on issues of breach, cause, and damage to corporation. *Omnibank of Mantee v. United S. Bank*, 607 So. 2d 76 (Miss. 1992), later proceeding, *United S. Bank v. Bank of Mantee*, 680 So. 2d 220 (Miss. 1996).

A corporate officer's duties of care and loyalty extend to pledgees of corporate shares as well as to shareholders. *Gibson v. Manuel*, 534 So. 2d 199 (Miss. 1988).

2. Duties where close corporation.

In a close corporation where a majority stockholder stands to benefit as a controlling stockholder, the majority's action must be "intrinsically fair" to the minority interest. Thus, stockholders in close corporations must bear towards each other the same relationship of trust and confidence which prevails in partnerships, rather than resort to statutory defenses. This does not mean that directors, executive officers and stockholders are not required to adhere to the corporate statutes; rather, blind adherence to corporate statutes may not be used to circumvent the corporation's by-laws, charter or various agreements, such as a stock redemption agreement, because of the "intrinsically fair" standard that is now adopted. *Fought v. Morris*, 543 So. 2d 167 (Miss. 1989).

RESEARCH REFERENCES

ALR. Duty and liability of closely held corporation, its directors, officers, or majority stockholders, in acquiring stock of minority shareholder. 7 A.L.R.3d 500.

Liability of corporate directors for negligence in permitting mismanagement or defalcation by officers or employees. 25 A.L.R.3d 941.

What amounts to participation by corporate officer or agent in illegal issuance of security, in order to impose liability upon him under state securities regulations. 44 A.L.R.3d 588.

Payment of premiums by corporation on corporate officer's life insurance as affecting right to policy. 56 A.L.R.3d 1086.

What business opportunities are in "line of business" of corporation for purposes of determining whether a corporate opportunity was presented. 77 A.L.R.3d 961.

Duty to disclose material facts to stock purchaser. 80 A.L.R.3d 13.

Financial inability of corporation to take advantage of business opportunity as affecting determination whether "corporate opportunity" was presented. 16 A.L.R.4th 185.

Purchase of shares of corporation by director or officer as usurpation of "corporate opportunity." 16 A.L.R.4th 784.

Availability of and time for bringing action against former director, officer, or

stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Liability of corporate director, officer, or employee for tortious interference with corporation's contract with another. 72 A.L.R.4th 492.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1455 et seq.

9 Am. Jur. Proof of Facts 2d 57, Corporate Officer or Director as Alter Ego of Corporation.

22 Am. Jur. Proof of Facts 2d 593, Wrongful Failure of Corporate Directors to Declare Dividend, §§ 14 et seq.

CJS. 19 C.J.S., Corporations §§ 848 et seq.

Law Reviews. Smith, Recognition of the fiduciary duties of corporate directors and officers defending against change of control by tender offer. 7 Miss. C. L. Rev. 117, Spring, 1987.

Robertson, The Law of Corporate Governance: Coming of Age in Mississippi? 65 Miss. L. J. 477, Spring, 1996.

§ 79-4-8.43. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(b) An officer may be removed at any time with or without cause by: (i) the board of directors; (ii) the officer who appointed such officer, unless the bylaws or the board of directors provide otherwise; or (iii) any other officer if authorized by the bylaws or the board of directors.

(c) In this section, "appointing officer" means the officer (including any successor to that officer) who appointed the officer resigning or being removed.

SOURCES: Laws, 1987, ch 486, § 8.43; Laws, 2001, ch. 435, § 13, eff from and after July 1, 2001.

Cross References — Officer's contract rights-effect of officer's removal or resignation, see § 79-4-8.44.

Officers of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-271 through 79-11-279.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-97.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-97.

11. In general.

While a bylaw or statute may empower the board of directors to strip an officer of

his title and corporate authority, it does not follow that the board is also empowered to disregard contractual obligations with impunity. *Short v. Columbus Rubber & Gasket Co.*, 535 So. 2d 61 (Miss. 1988).

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1218, 1241 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1031, 74:1033, 74:1034, 74:1334, 74:1335.

CJS. 19 C.J.S., Corporations §§ 811-817.

Law Reviews. Smith, Recognition of the fiduciary duties of corporate directors and officers defending against change of control by tender offer. 7 Miss. C. L. Rev. 117, Spring, 1987.

§ 79-4-8.44. Contract rights of officers.

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

SOURCES: Laws, 1987, ch. 486, § 8.44, eff from and after January 1, 1988.

Cross References — Officers of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-271 through 79-11-279.

RESEARCH REFERENCES

ALR. Payment of premiums by corporation on corporate officer's life insurance as affecting right to policy. 56 A.L.R.3d 1086.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1244, 1254.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:594, 74:1366.

CJS. 19 C.J.S., Corporations §§ 804, 811.

SUBARTICLE E.

INDEMNIFICATION.

SEC.

79-4-8.50. Subarticle definitions.

79-4-8.51. Authority to indemnify.

79-4-8.52.	Mandatory indemnification.
79-4-8.53.	Advance for expenses.
79-4-8.54.	Court-ordered indemnification.
79-4-8.55.	Determination and authorization of indemnification.
79-4-8.56.	Indemnification of officers.
79-4-8.57.	Insurance.
79-4-8.58.	Application of subarticle.
79-4-8.59.	Subarticle to be controlling.

§ 79-4-8.50. Subarticle definitions.

In this subarticle:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" includes counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an officer, as contemplated in Section 79-4-8.56, the office in a corporation held by the officer. "Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

(6) "Party" means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative and whether formal or informal.

SOURCES: Laws, 1987, ch. 486, § 8.50; Laws, 1996, ch. 459, § 3; Laws, 2006, ch. 429, § 5, eff from and after July 1, 2006.

Cross References — Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services pensable element of award in state court.
provided by paralegals or the like as com- 73 A.L.R.4th 938.

§ 79-4-8.51. Authority to indemnify.

(a) Except as otherwise provided in subsection (d) of this section, a corporation may indemnify an individual who is a party to a proceeding because he is a director against liability incurred in the proceeding if:

(1)(i) He conducted himself in good faith; and

(ii) He reasonably believed:

(A) In the case of conduct in his official capacity, that his conduct was in the best interests of the corporation; and

(B) In all other cases, that his conduct was at least not opposed to the best interests of the corporation; and

(iii) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful; or

(2) He engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by Section 79-4-2.02(b)(5).

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interest of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(1)(ii)(B).

(c) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under Section 79-4-8.54(a)(3), a corporation may not indemnify a director under this section:

(1) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a); or

(2) In connection with any proceeding with respect to conduct for which he was adjudged liable on the basis that he received a financial benefit to which he was not entitled, whether or not involving action in his official capacity.

SOURCES: Laws, 1987, ch. 486, § 8.51; Laws, 1996, ch. 459, § 4, eff from and after January 1, 1997.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, in (a)(2), the word "for" was inserted following "He engaged in conduct."

Cross References — Corporation's authority to pay for or reimburse reasonable expenses incurred by director who was party to proceeding in advance of final disposition, see § 79-4-8.53.

Court-ordered indemnification of director, see § 79-4-8.54.

Determination of and authorization for indemnification, see § 79-4-8.55.

Authority for corporation to purchase indemnification insurance to cover situations not covered by §§ 79-4-8.51 or 79-4-8.52, see § 79-4-8.57.

Requirement that corporation report to shareholders if corporation indemnifies or advances expenses to director under this section, see § 79-4-16.21.

Indemnification of nonprofit corporation director officer, employee or agent, see § 79-11-281.

Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations
§§ 1644 et seq.

CJS. 19 C.J.S., Corporations §§ 1063,
1230-1232.

6 Am. Jur. Legal Forms 2d, Corporations
§ 74:1097.

§ 79-4-8.52. Mandatory indemnification.

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

SOURCES: Laws, 1987, ch. 486, § 8.52; Laws, 1996, ch. 459, § 5, eff from and after January 1, 1997.

Cross References — Court-ordered indemnification of director, see § 79-4-8.54.

Mandatory indemnification of officers of corporation who are not directors, see § 79-4-8.56.

Authority for corporation to purchase indemnification insurance to cover situations not covered by §§ 79-4-8.51 or 79-4-8.52, see § 79-4-8.57.

Requirement that corporation report to shareholders if corporation indemnifies or advances expenses to director under this section, see § 79-4-16.21.

Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations
§ 1654.

§ 79-4-8.53. Advance for expenses.

(a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation:

(1) A written affirmation of the director's good faith belief that the relevant standard of conduct described in Section 79-4-8.51 has been met by

the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by Section 79-4-2.02(b)(4); and

(2) A written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under Section 79-4-8.52 and it is ultimately determined under Section 79-4-8.54 or Section 79-4-8.55 that the director has not met the relevant standard of conduct described in Section 79-4-8.51.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(i) If there are two (2) or more qualified directors, by a majority vote of all the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two (2) or more qualified directors appointed by such a vote; or

(ii) If there are fewer than two (2) qualified directors, by the vote necessary for action by the board in accordance with Section 79-4-8.24(c), in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

SOURCES: Laws, 1987, ch. 486, § 8.53; Laws, 1996, ch. 459, § 6; Laws, 2006, ch. 429, § 6, eff from and after July 1, 2006.

Cross References — Qualified director defined, see § 79-4-1.43.

Court ordered advance for expenses, see § 79-4-8.54.

Indemnification of nonprofit corporation director, officer, employee, agent, see § 79-11-281.

Requirement that corporation report to shareholders if corporation indemnifies or advances expenses to director under this section, see § 79-4-16.21.

Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

RESEARCH REFERENCES

ALR. Insurance: construction of policy or bond indemnifying directors or officers of corporation for expenses incurred in defending actions brought against them in their capacity as such. 49 A.L.R.3d 1250.

Am Jur. 18B Am. Jur. 2d, Corporations § 1651.

§ 79-4-8.54. Court-ordered indemnification.

(a) A director who is a party to a proceeding because he is a director may apply for indemnification or an advance for expenses to the court conducting

the proceeding or to another court of competent jurisdiction. After receipt of an application, and after giving any notice it considers necessary, the court shall:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under Section 79-4-8.52;

(2) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by Section 79-4-8.58(a); or

(3) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if he has not met the relevant standard of conduct set forth in Section 79-4-8.51(a), failed to comply with Section 79-4-8.53 or was adjudged liable in a proceeding referred to in subsection 79-4-8.51(d)(1) or (d)(2), but if he was adjudged so liable his indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under subsection (a)(1) or to indemnification or advance for expenses under subsection (a)(2), it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (a)(3), it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

SOURCES: Laws, 1987, ch. 486, § 8.54; Laws, 1996, ch. 459, § 7, eff from and after January 1, 1997.

Cross References — Exceptions to indemnification of director under § 79-4-8.51 unless ordered by a court under subsection (a)(3) of this section, see § 79-4-8.51.

Advance for expenses, see § 79-4-8.53.

Court-ordered indemnification of officer of corporation who is not a director, see § 79-4-8.56.

Requirement that corporation report to shareholders if corporation indemnifies or advances expenses to director under this section, see § 79-4-16.21.

Indemnification of nonprofit corporation director, officer, employee, agent, see § 79-11-281.

Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

RESEARCH REFERENCES

ALR. Power of court, in absence of statute, to require corporate surety on fiduciary bond in probate proceeding. 82 A.L.R.2d 926.

tions period in UCC § 2-725. 49 A.L.R.5th 1.

Am Jur. 18B Am. Jur. 2d, Corporations § 1650.

Causes of action governed by limita-

§ 79-4-8.55. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under Section 79-4-8.51 unless authorized for a specific proceeding after a determination has been made that indemnification is permissible because the director has met the relevant standard of conduct set forth in Section 79-4-8.51.

(b) The determination shall be made:

(1) If there are two (2) or more qualified directors, by the board of directors by a majority vote of all the qualified directors (a majority of whom shall for such purpose constitute a quorum), or by a majority of the members of a committee of two (2) or more qualified directors appointed by such a vote;

(2) By special legal counsel:

(i) Selected in the manner prescribed in subdivision (1); or

(ii) If there are fewer than two (2) qualified directors, selected by the board of directors (in which selection directors who are not qualified directors may participate); or

(3) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two (2) qualified directors, or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under subsection (b)(2)(ii).

SOURCES: Laws, 1987, ch. 486, § 8.55; Laws, 1996, ch. 459, § 8; Laws, 2006, ch. 429, § 7, eff from and after July 1, 2006.

Cross References — Qualified director defined, see § 79-4-1.43.

Applicability of this section to payment of expenses to director in advance of final disposition of proceeding, see § 79-4-8.53.

Applicability of this section to determinations of further indemnity, see § 79-4-8.58.

Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

RESEARCH REFERENCES

ALR. Right of corporation to indemnity for civil or criminal liability incurred by employee's violation of antitrust laws. 37 A.L.R.3d 1355.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1644 et seq.

§ 79-4-8.56. Indemnification of officers.

(a) A corporation may indemnify and advance expenses under this subarticle to an officer of the corporation who is a party to a proceeding because he is an officer of the corporation:

(1) To the same extent as to a director; and

(2) If he is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors or contract except for (A) liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding or (B) liability arising out of conduct that constitutes (i) receipt by him of a financial benefit to which he is not entitled, (ii) an intentional infliction of harm on the corporation or the shareholders, or (iii) an intentional violation of criminal law.

(b) The provisions of subsection (a)(2) shall apply to an officer who is also a director if the basis on which he is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under Section 79-4-8.52, and may apply to a court under Section 79-4-8.54 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

SOURCES: Laws, 1987, ch. 486, § 8.56; Laws, 1996, ch. 459, § 9, eff from and after January 1, 1997.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a publishing error in the section heading. The words “employees and agents” were deleted from the end. The Joint Committee ratified the correction at its May 16, 2002 meeting.

Cross References — Definition of “official capacity”, see § 79-4-8.50.

Indemnification of nonprofit corporation director, officer, employee, agent, see § 79-11-281.

Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

RESEARCH REFERENCES

ALR. Who is “executive officer” of insured within liability insurance policy. 1 A.L.R.5th 132. 6 Am. Jur. Legal Forms 2d, Corporations § 74:1097.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1644 et seq.

§ 79-4-8.57. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation’s request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director or officer, whether or not the

corporation would have power to indemnify or advance expenses to him against the same liability under this subarticle.

SOURCES: Laws, 1987, ch. 486, § 8.57; Laws, 1996, ch. 459, § 10, eff from and after January 1, 1997.

Cross References — Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

RESEARCH REFERENCES

ALR. Insurance: construction of policy or bond indemnifying directors or officers of corporation for expenses incurred in defending actions brought against them in their capacity as such. 49 A.L.R.3d 1250.

Who is “executive officer” of insured within liability insurance policy. 1 A.L.R.5th 132.

Am Jur. 18B Am. Jur. 2d, Corporations § 1649.

§ 79-4-8.58. Application of subarticle.

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with Section 79-4-8.51 or advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with Section 79-4-8.53 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by Section 79-4-11.06(a)(3).

(c) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subarticle.

(d) This subarticle does not limit a corporation’s power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(e) This subarticle does not limit a corporation’s power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

SOURCES: Laws, 1987, ch. 486, § 8.58; Laws, 1996, ch. 459, § 11, eff from and after January 1, 1997.

Cross References — Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

§ 79-4-8.59. Subarticle to be controlling.

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this subarticle.

SOURCES: Laws, 1996, ch. 459, § 12, eff from and after January 1, 1997.

Cross References — Indemnification of directors, officers, employees, agents under Mississippi Nonprofit Corporation Act, see § 79-11-281.

SUBARTICLE F.

DIRECTOR'S CONFLICTS OF INTEREST.

SEC.

- 79-4-8.60. Definitions.
- 79-4-8.61. When director's actions not sanctionable.
- 79-4-8.62. Effectiveness of directors' action; disclosure.
- 79-4-8.63. Shareholder approval of director's conflicting interest transaction.
- 79-4-8.70. Business opportunities.

§ 79-4-8.60. Definitions.

In Sections 79-4-8.60 through 79-4-8.63 and Section 79-4-8.70:

(1) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation):

- (i) To which, at the relevant time, the director is a party; or
- (ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or
- (iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) "Control" (including the term "controlled by") means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) "Relevant time" means (i) the time at which directors' actions respecting the transaction are taken in compliance with Section 79-4-8.62, or (ii) if the transaction is not brought before the board of directors of the corporation (or its committee) for action under Section 79-4-8.62, at the time the corporation (or an entity controlled by the corporation) becomes legally obligated to consummate the transaction.

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the

director's judgment when participating in action on the authorization of the transaction.

(5) "Related person" means:

- (i) The director's spouse;
- (ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, (or spouse of any thereof) of the director or of the director's spouse;
- (iii) An individual living in the same home as the director;
- (iv) An entity (other than the corporation or an entity controlled by the corporation) controlled by the director or any person specified in this paragraph (5);

(v) A domestic or foreign (A) business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the director is a director, (B) unincorporated entity of which the director is a general partner or a member of the governing body, or (C) individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or

(vi) A person that is, or an entity that is controlled by, an employer of the director.

(6) "Fair to the corporation" means, for purposes of Section 79-4-8.61(b)(3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director's dealings with the corporation, and (ii) comparable to what might have been obtainable in an arms' length transaction, given the consideration paid or received by the corporation.

(7) "Required disclosure" means disclosure of (i) the existence and nature of the director's conflicting interest, and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

SOURCES: Laws, 1990, ch. 538, § 1; Laws, 2006, ch. 429, § 8, *eff from and after July 1, 2006*.

Cross References — Director's conflict of interest under Mississippi Nonprofit Corporation Act, see § 79-11-269.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1500 et seq.

16 Am. Jur. Proof of Facts 3d 583, Corporate Director's Breach of Fiduciary Duty to Creditors.

CJS. 19 C.J.S., Corporations §§ 870 et seq.

Law Reviews. Transactions Between a Corporation and Its Directors: Where Does Mississippi Stand? 52 Miss. L. J. 877, December 1982.

§ 79-4-8.61. When director's actions not sanctionable.

(a) A transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation on the ground that the director has an interest respecting the transaction, if:

(1) Directors' action respecting the transaction was taken in compliance with Section 79-4-8.62 at any time; or

(2) Shareholders' action respecting the transaction was taken in compliance with Section 79-4-8.63 at any time; or

(3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

SOURCES: Laws, 1990, ch. 538, § 2; Laws, 1991, ch. 320 § 2; Laws, 2006, ch. 429, § 9, eff from and after July 1, 2006.

Cross References — Director's conflicting interest transaction defined, see § 79-4-8.60.

Effectiveness of director's action for purposes of § 79-4-8.61, see § 79-4-8.62.

Effectiveness of transaction for purposes of § 79-4-8.61 when shareholders approve, see § 79-4-8.63.

Shareholders' action respecting a business opportunity taken in compliance with § 79-4-8.63 not sanctionable, see § 79-4-8.70.

Director's conflict of interest under Mississippi Nonprofit Corporation Act, see § 79-11-269.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1500 et seq.

CJS. 19 C.J.S., Corporations §§ 870 et seq.

Law Reviews. Transactions Between a Corporation and Its Directors: Where

Does Mississippi Stand? 52 Miss. L. J. 877, December 1982.

Robertson, The Law of Corporate Governance: Coming of Age in Mississippi? 65 Miss. L. J. 477, Spring, 1996.

§ 79-4-8.62. Effectiveness of directors' action; disclosure.

(a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of Section 79-4-8.61(b)(1) if the transaction has been authorized by the affirmative vote of a majority (but no fewer than two (2)) of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified

directors or after modified disclosure in compliance with subsection (b), provided that:

(1) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(2) Where the action has been taken by a committee, all members of the committee were qualified directors, and either (i) the committee was composed of all the qualified directors on the board of directors, or (ii) the members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a), when a transaction is a director's conflicting interest transaction only because a related person described in Section 79-4-8.60(5)(v) or (vi) is a party to or has material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction:

(1) All information required to be disclosed that is not so violative;

(2) The existence and nature of the director's conflicting interest; and

(3) The nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority (but no fewer than two (2)) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

SOURCES: Laws, 1990, ch. 538, § 3; Laws, 2006, ch. 429, § 10, eff from and after July 1, 2006.

Cross References — Qualified director defined, see § 79-4-1.43.

Director's conflicting interest transaction defined, see § 79-4-8.60.

Directors' action respecting transaction taken in compliance with § 79-4-8.62 not sanctionable, see § 79-4-8.61.

Directors' action respecting a business opportunity taken in compliance with § 79-4-8.62 not sanctionable, see § 79-4-8.70.

Director's conflict of interest under Mississippi Nonprofit Corporation Act, see § 79-11-269.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1500 et seq.

CJS. 19 C.J.S., Corporations §§ 870 et seq.

Law Reviews. Transactions Between a Corporation and Its Directors: Where Does Mississippi Stand? 52 Miss. L. J. 877, December 1982.

§ 79-4-8.63. Shareholder approval of director's conflicting interest transaction.

(a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of Section 79-4-8.61(b)(2) if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after (1) notice to shareholders describing the action to be taken respecting the transaction, (2) provision to the corporation of the information referred to in subsection (b), and (3) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c), and the identity of the holders of those shares.

(c) For purposes of this section, (1) "holder" means, and "held by" refers to shares held by, both a record shareholder (as defined in Section 79-4-13.01(7)) and a beneficial shareholder (as defined in Section 79-4-13.01(2)); and (2) "qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary (or other officer or agent of the corporation authorized to tabulate votes) either knows, or under subsection (b) is notified, are held by (A) a director who has a conflicting interest respecting the transaction, or (B) a related person of the director (excluding a person described in Section 79-4-8.60(5)(vi)).

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e), shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) solely because of a director's failure to comply with subsection (b), and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

(f) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

SOURCES: Laws, 1990, ch. 538, § 4; Laws, 2006, ch. 429, § 11, eff from and after July 1, 2006.

Cross References — Director's conflicting interest transaction defined, see § 79-4-8.60.

Shareholders' action respecting transaction taken in compliance with § 79-4-8.63 as not sanctionable, see § 79-4-8.61.

Director's conflict of interest under Mississippi Nonprofit Corporation Act, see § 79-11-269.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1500 et seq.

CJS. 19 C.J.S., Corporations §§ 870 et seq.

Law Reviews. Transactions Between a Corporation and Its Directors: Where Does Mississippi Stand? 52 Miss. L. J. 877, December 1982.

§ 79-4-8.70. Business opportunities.

(a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

(1) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in Section 79-4-8.62, as if the decision being made concerned a director's conflicting interest transaction; or

(2) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in Section 79-4-8.63, as if the decision being made concerned a director's conflicting interest transaction;

except that, rather than making "required disclosure" as defined in Section 79-4-8.60, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

SOURCES: Laws, 2006, ch. 429, § 12, eff from and after July 1, 2006.

Cross References — Qualified director defined, see § 79-4-1.43.

Director's conflicting interest transaction defined, see § 79-4-8.60.
Director's conflict of interest under Mississippi Nonprofit Corporation Act, see § 79-11-269.

ARTICLE 10.

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS.

Subarticle A. Amendment of Articles of Incorporation.....79-4-10.01
Subarticle B. Amendment of Bylaws.....79-4-10.20

SUBARTICLE A.

AMENDMENT OF ARTICLES OF INCORPORATION.

SEC.
79-4-10.01. Authority to amend.
79-4-10.02. Amendment before issuance of shares.
79-4-10.03. Amendment by board of directors and shareholders.
79-4-10.04. Voting on amendments by voting groups.
79-4-10.05. Amendment by board of directors.
79-4-10.06. Articles of amendment.
79-4-10.07. Restated articles of incorporation.
79-4-10.08. Amendment pursuant to reorganization.
79-4-10.09. Effect of amendment.

§ 79-4-10.01. Authority to amend.

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.
(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement or purpose or duration of the corporation.

SOURCES: Laws, 1987, ch. 486, § 10.01; Laws, 2000, ch. 469, § 3, eff from and after July 1, 2000.

Cross References — Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

JUDICIAL DECISIONS

I. Under Current Law.	II. Under Former § 79-3-115.
1.-10. [Reserved for future use.]	11. In general.

I. Under Current Law.**1.-10. [Reserved for future use.]****II. Under Former § 79-3-115.****11. In general.**

Under Miss. Const. Art. 4, § 88 a bank organized with an authorized capital

stock of \$35,000 may by a majority vote of its stockholders, as provided for amendments, reduce its capital stock to \$25,000. *Perry v. Bank of Commerce*, 116 Miss. 838, 77 So. 812 (1918).

RESEARCH REFERENCES

ALR. Provision authorizing directors to fill vacancies as applicable to newly created directorships. 6 A.L.R.2d 174.

Reduction of capital stock and distribution of capital assets upon reduction. 35 A.L.R.2d 1149.

Retroactive effect of statute fixing minimum value of corporate stock shares or otherwise affecting power of corporation to change par value of existing shares. 54 A.L.R.2d 1289.

Power of corporation to change existing redemption rights of common stock shareholders. 70 A.L.R.2d 843.

Change in stock or corporate structure, or split or substitution of stock of corpora-

tion, as affecting bequest of stock. 46 A.L.R.3d 7.

Am Jur. 18 Am. Jur. 2d, Corporations §§ 96 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:771, 74:771.1 (amendment of articles of incorporation — amendment of article concerning capitalization), 74:861 et seq.

CJS. 18 C.J.S., Corporations §§ 81, 112-117.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-10.02. Amendment before issuance of shares.

If a corporation has not yet issued shares, its board of directors, or its incorporators, if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

SOURCES: Former 1972 Code § 79-4-10.02 [Laws, 1987, ch. 486, § 10.02; Laws, 1988, ch. 368, § 11] renumbered as § 79-4-10.05 by Laws, 2000, ch. 469, § 7. Former 1972 Code § 79-4-10.05 [Laws, 1987, ch. 486, § 10.05] amended and renumbered as § 79-4-10.02 by Laws, 2000, ch. 469, § 4, eff from and after July 1, 2000.

Editor's Note — This section, formerly appearing as § 79-4-10.05, was amended and renumbered as present § 79-4-10.02 by Laws of 2000, ch. 469, § 4. Former § 79-4-10.02 was amended and renumbered as present § 79-4-10.05 by Laws of 2000, ch. 469, § 7.

Cross References — Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations §§ 84-99.

18A Am. Jur. 2d, Corporations § 179.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:871, 74:873, 74:874, 74:879.

§ 79-4-10.03. Amendment by board of directors and shareholders.

If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

(a) The proposed amendment must be adopted by the board of directors.

(b) Except as provided in Sections 79-4-10.05, 79-4-10.07, and 79-4-10.08, after adopting the proposed amendment the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(d) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in Section 79-4-10.04(c), the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

SOURCES: Laws, 1987, ch. 486, § 10.03; Laws, 2000, ch. 469, § 5, eff from and after July 1, 2000.

Cross References — Applicability of this section to restatement of articles of incorporation, see § 79-4-10.07.

Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations § 99.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 153.5 (complaint, peti-

tion, or declaration — stockholders' individual action — for declaratory and injunctive relief barring amendment to Articles of Incorporation).

CJS. 18 C.J.S., Corporations §§ 81, 112-117.

§ 79-4-10.04. Voting on amendments by voting groups.

(a) If a corporation has more than one (1) class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by the Mississippi Business Corporation Act, on a proposed amendment to the articles of incorporation if the amendment would:

(1) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(2) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(3) Change the rights, preferences or limitations of all or part of the shares of the class;

(4) Change the shares of all or part of the class into a different number of shares of the same class;

(5) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(6) Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(7) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(8) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles the holders of two (2) or more classes or series of shares to vote as separate voting groups under this section would affect those two (2) or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

(e) The provisions of subsection (a)(6) shall not apply to preferred stock issued by a public utility subject to the provisions of the Public Utility Holding

Company Act, 15 United States Code, Section 79 et seq., where the issuance of its securities is regulated by an agency of the United States.

SOURCES: Laws, 1987, ch. 486, § 10.04; Laws, 2000, ch. 469, § 6, eff from and after July 1, 2000.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq. Applicability of voting by voting groups as provided in this section to adoption of plan of merger, see § 79-4-11.04.

Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

Federal Aspects — The Public Utility Holding Company Act is codified as 15 USCS §§ 79 et seq.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations § 99.

6 Am. Jur. Legal Forms 2d, Corporations § 74:895.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 153.5 (complaint, peti-

tion, or declaration — stockholders' individual action — for declaratory and injunctive relief barring amendment to Articles of Incorporation).

CJS. 18 C.J.S., Corporations § 113.

§ 79-4-10.05. Amendment by board of directors.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

(4) If the corporation has only one (1) class of shares outstanding:

(a) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

(b) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

(5) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited" or the abbreviation "corp.," "inc.," "co." or "ltd." for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;

(6) To reflect a reduction in authorized shares, as a result of the operation of Section 79-4-6.31(b), when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

(7) To delete a class of shares from the articles of incorporation, as a result of the operation of Section 79-4-6.31(b), when there are no remaining

shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

(8) To make any change expressly permitted by Section 79-4-6.02(a) or (b) to be made without shareholder approval.

SOURCES: Former 1972 Code § 79-4-10.05 [Laws, 1987, ch. 486, § 10.05] renumbered as § 79-4-10.02 by Laws, 2000, ch. 469, § 4. Former 1972 Code § 79-4-10.02 [Laws, 1987, ch. 486, § 10.02; Laws, 1988, ch. 368, § 11] amended and renumbered as § 79-4-10.05 by Laws, 2000, ch. 469, § 7; Laws, 2004, ch. 495, § 7, eff from and after July 1, 2004.

Editor's Note — This section, formerly appearing as § 79-4-10.02, was amended and renumbered as present § 79-4-10.05 by Laws, 2000, ch. 469, § 7. Former § 79-4-10.05 was amended and renumbered as present § 79-4-10.02 by Laws, 2000, ch. 469, § 4.

Cross References — Lack of authority for committees to amend articles of incorporation pursuant to this section, see § 79-4-8.25.

No necessity for action by shareholders of surviving corporation on plan of merger if articles of incorporation will not differ except for amendments enumerated in § 79-4-10.05, see § 79-4-11.04.

Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations §§ 84-99.

18A Am. Jur. 2d, Corporations § 179.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:875-74:878.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 153.5.

CJS. 18 C.J.S., Corporations § 81.

§ 79-4-10.06. Articles of amendment.

After an amendment to the articles of incorporation has been adopted and approved in the manner required by the Mississippi Business Corporation Act and by the articles of incorporation, the corporation shall deliver to the Secretary of State, for filing, articles of amendment, which shall set forth:

(1) The name of the corporation;

(2) The text of each amendment adopted, or the information required by Section 79-4-1.20(k)(5);

(3) If an amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for implementing the amendment (if not contained in the amendment itself), which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with Section 79-4-1.20(k);

(4) The date of each amendment's adoption; and

(5) If an amendment:

(a) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly ap-

proved by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required;

(b) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by the Mississippi Business Corporation Act and by the articles of incorporation; or

(c) Is being filed pursuant to Section 79-4-1.20(k)(5), a statement to that effect.

SOURCES: Laws, 1987, ch. 486, § 10.06; Laws, 1993, ch. 368, § 17; Laws, 2000, ch. 469, § 8; Laws, 2004, ch. 495, § 8, eff from and after July 1, 2004.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-101 et seq.

Applicability of § 79-4-10.06 to requirements for filing certificate of restated articles of incorporation, see § 79-4-10.07.

Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations §§ 84-99.

18A Am. Jur. 2d, Corporations § 179.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:854, 74:903, 74:905-74:907.

CJS. 18 C.J.S., Corporations § 81.

§ 79-4-10.07. Restated articles of incorporation.

(a) A corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

(b) If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in Section 79-4-10.03.

(c) A corporation that restates its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, together with a certificate which states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, which also includes the statements required under Section 79-4-10.06.

(d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(e) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by subsection (c).

SOURCES: Laws, 1987, ch. 486, § 10.07; Laws, 2000, ch. 469, § 9, eff from and after July 1, 2000.

Cross References — Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations § 74:862.

§ 79-4-10.08. Amendment pursuant to reorganization.

(a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

SOURCES: Laws, 1987, ch. 486, § 10.08; Laws, 2000, ch. 469, § 10, eff from and after July 1, 2000.

Cross References — Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations § 2309.

CJS. 19 C.J.S., Corporations § 1584.

§ 79-4-10.09. Effect of amendment.

An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

SOURCES: Laws, 1987, ch. 486, § 10.09; Laws, 2000, ch. 469, § 11, eff from and after July 1, 2000.

Cross References — Amendment of articles of incorporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-295 through 79-11-311.

SUBARTICLE B.

AMENDMENT OF BYLAWS.

SEC.

- 79-4-10.20. Amendment by board of directors or shareholders.
- 79-4-10.21. Bylaw increasing quorum or voting requirement for directors.
- 79-4-10.22. Repealed.

§ 79-4-10.20. Amendment by board of directors or shareholders.

(a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(1) The articles of incorporation or Section 79-4-10.21 reserve that power exclusively to the shareholders in whole or part; or

(2) The shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

SOURCES: Laws, 1987, ch. 486, § 10.20; Laws, 2000, ch. 469, § 12, eff from and after July 1, 2000.

Cross References — Amendment of bylaws under Mississippi Nonprofit Corporation Act, see §§ 79-11-313 through 79-11-317.

RESEARCH REFERENCES

- Am Jur.** 18A Am. Jur. 2d, Corporations §§ 263, 266, 272-275.
- 6 Am. Jur. Legal Forms 2d, Corporations §§ 74:783, 74:784, 74:934, 74:1143-74:1146.
- 7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 153.
- CJS.** 18 C.J.S., Corporations § 252.

§ 79-4-10.21. Bylaw increasing quorum or voting requirement for directors.

(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

(1) If adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides;

(2) If adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a) to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

SOURCES: Laws, 1987, ch. 486, § 10.21; Laws, 2000, ch. 469, § 13, eff from and after July 1, 2000.

Cross References — Amendment of bylaws under Mississippi Nonprofit Corporation Act, see §§ 79-11-313 through 79-11-317.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of provision in charter or bylaw requiring supermajority vote. 80 A.L.R.4th 667.

Am Jur. 18A Am. Jur. 2d, Corporations § 832.

CJS. 18 C.J.S., Corporations §§ 642, 643.

§ 79-4-10.22. Repealed.

Repealed by Laws, 2000, ch. 469, eff from and after July 1, 2000.

[Laws, 1987, ch. 486, § 10.22, eff from and after January 1, 1988]

Editor's Note — Former § 79-4-10.22 provided for bylaws increasing quorum or voting requirements for directors. For present provisions, see § 79-4-10.21.

Cross References — Amendment of bylaws under Mississippi Nonprofit Corporation Act, see §§ 79-11-313 through 79-11-317.

ARTICLE 11.

MERGER AND SHARE EXCHANGE.

SEC.

- 79-4-11.01. Definitions.
- 79-4-11.02. Merger.
- 79-4-11.03. Share exchange.
- 79-4-11.04. Action on a plan of merger or share exchange.
- 79-4-11.05. Merger between parent and subsidiary or between subsidiaries.
- 79-4-11.06. Articles of merger or share exchange.
- 79-4-11.07. Effect of merger or share exchange.
- 79-4-11.08. Abandonment of merger or share exchange.

§ 79-4-11.01. Definitions.

As used in this chapter:

- (a) "Interests" means the proprietary interests in an other entity.

(b) "Merger" means a business combination pursuant to Section 79-4-11.02

(c) "Organizational documents" means the basic document or documents that create, or determine the internal governance of, an other entity.

(d) "Other entity" means any association or legal entity, other than a domestic or foreign corporation, organized to conduct business, including, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.

(e) "Party to a merger" or "party to a share exchange" means any domestic or foreign corporation or other entity that will either:

(1) Merge under a plan of merger;

(2) Acquire shares or interests of another corporation or an other entity in a share exchange; or

(3) Have all of its shares or interests or all of one or more classes or series of its shares or interests acquired in a share exchange.

(f) "Share exchange" means a business combination pursuant to Section 79-4-11.03.

(g) "Survivor" in a merger means the corporation or other entity into which one or more other corporations or other entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

SOURCES: Laws, 2000, ch. 469, § 15, eff from and after July 1, 2000.

Editor's Note — Laws, 2000, ch. 469, § 16, renumbered and amended former § 79-4-11.01 as present § 79-4-11.02.

§ 79-4-11.02. Merger.

(a) One or more domestic corporations may merge with a domestic or foreign corporation or other entity pursuant to a plan of merger.

(b) A foreign corporation, or a domestic or foreign other entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(1) The merger is permitted by the laws under which the corporation or other entity is organized or by which it is governed; and

(2) In effecting the merger, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of merger must include:

(1) The name of each corporation or other entity that will merge and the name of the corporation or other entity that will be the survivor of the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the shares of each merging corporation and interest of each merging other entity into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(4) The articles of incorporation of any corporation, or the organizational documents of any other entity to be created by the merger, or if a new corporation or other entity is not to be created by the merger, any amendments to the survivor's articles of incorporation, or organizational documents; and

(5) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan;

(2) Change the articles of incorporation of any corporation or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for changes permitted by Section 79-4-10.05 or by comparable provisions of the laws under which the foreign corporation or other entity is organized or governed; or

(3) Change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Liability from a merger shall be limited as provided in Sections 79-33-1 through 79-33-9.

SOURCES: Former 1972 Code § 79-4-11.02 [Laws, 1987, ch. 486, § 11.02] renumbered as § 79-4-11.03 by Laws, 2000, ch. 469, § 17. Former 1972 Code § 79-4-11.01 [Laws, 1987, ch. 486, § 11.01] amended and renumbered as § 79-4-11.02 by Laws, 2000, ch. 469, § 16; Laws, 2004, ch. 353, § 7; Laws, 2004, ch. 495, § 9, eff from and after July 1, 2004.

Joint Legislative Committee Note — Section 7 of ch. 353, Laws of 2004, effective from and after passage (approved April 20, 2004), amended this section. Section 9 of ch. 495, Laws of 2004, effective from and after July 1, 2004, also amended this section. As set out above, this section reflects the language of Section 9 of ch. 495, Laws of 2004, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section effective on an earlier date.

Editor's Note — This section, formerly appearing as § 79-4-11.01, was amended and renumbered as present § 79-4-11.02 by Laws, 2000, ch. 469, § 16. Former § 79-4-11.02 was amended and renumbered as present § 79-4-11.03 by Laws, 2000, ch. 469, § 17.

Cross References — Merger of corporations under Mississippi Nonprofit Corporation Act, see §§ 79-11-319 through 79-11-327.

Merger of one or more foreign business or nonprofit corporations with one or more domestic nonprofit corporations, see § 79-11-327.

Acquisition of control shares pursuant to a merger under this article as not constituting control share acquisition, see § 79-27-5.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-141.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-141.

11. In general.

Documentary evidence was not required to show the existence of a merger of two corporations. Although it may have

been preferable to have introduced the certificate of merger, the testimony of an officer of one of the corporations was sufficient to prove the existence of the merger. *Weeks v. Cal-Maine Foods, Inc.*, 522 So. 2d 725 (Miss. 1987).

In the absence of proof of the existence of a de facto merger, or of any bona fide or colorable attempt to comply with the statutory requirements for corporate mergers, a creditor cannot maintain a joint and several action against two corporations for debts incurred only by one. *Jac See Packing Co. v. C. & F. Packing House Mkt., Inc.*, 215 So. 2d 704 (Miss. 1968).

RESEARCH REFERENCES

ALR. Similarity of ownership or control as basis for charging corporation acquiring assets of another with liability for former owner's debts. 49 A.L.R.3d 881.

Products liability: liability of successor corporation for injury or damage caused by product issued by predecessor. 66 A.L.R.3d 824.

Liability of successor corporation for punitive damages for injury caused by predecessor's product. 55 A.L.R.4th 166.

Sufficiency, under § 14 of Securities Exchange Act of 1934 (15 USCS § 78n) and implementing regulations, of proxy or information statement incident to merger of corporation. 4 A.L.R. Fed. 1021.

Who acquires rights under patent license owned by constituent corporation in case of corporate merger or consolidation. 49 A.L.R. Fed. 890.

What constitutes violation of § 208 of Employee Retirement Income Security Act (ERISA) (29 USCS § 1058), prohibit-

ing certain mergers, consolidations, and transfers involving pension plans. 103 A.L.R. Fed. 390.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2239 et seq.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:2191 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 401 et seq. (consolidation and merger).

20 Am. Jur. Proof of Facts 2d 609, De Facto Merger of Two Corporations.

CJS. 19 C.J.S., Corporations §§ 1617 et seq.

Law Reviews. Clarke, The fiduciary obligations of lenders in leveraged buyouts. 54 Miss. L. J. 423, Sept.-Dec., 1984.

Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-11.03. Share exchange.

(a) Through a share exchange:

(1) A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

(2) All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

(b) A foreign corporation, or a domestic or foreign other entity, may be a party to the share exchange only if:

(1) The share exchange is permitted by the laws under which the corporation or other entity is organized or by which it is governed; and

(2) In effecting the share exchange, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

(c) The plan of share exchange must include:

(1) The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

(2) The terms and conditions of the share exchange;

(3) The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

(d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with Section 79-4-1.20(k).

(e) The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the Secretary of State, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan may not be amended to:

(1) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan; or

(2) Change any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

(f) Section 79-4-11.03 does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

SOURCES: Former 1972 Code § 79-4-11.03 [Laws, 1987, ch. 486, § 11.03] renumbered as § 79-4-11.04 by Laws, 2000, ch. 469, § 18. Former 1972 Code § 79-4-11.02 [Laws, 1987, ch. 486, § 11.02] amended and renumbered as § 79-4-11.03 by Laws, 2000, ch. 469, § 17; Laws, 2004, ch. 495, § 10, eff from and after July 1, 2004.

Editor's Note — This section, formerly appearing as § 79-4-11.02, was amended and renumbered as present § 79-4-11.03 by Laws of 2000, ch. 469, § 17. Former § 79-4-11.03 was amended and renumbered as present § 79-4-11.04 by Laws of 2000, ch. 469, § 18.

Cross References — Shareholder's right to appraisal, see § 79-4-13.02.

Merger of corporations under Mississippi Nonprofit Corporation Act, see §§ 79-11-319 through 79-11-327.

RESEARCH REFERENCES

ALR. Products liability: liability of successor corporation for injury or damage caused by product issued by predecessor. 66 A.L.R.3d 824.

Liability of successor corporation for punitive damages for injury caused by predecessor's product. 55 A.L.R.4th 166.

Who acquires rights under patent license owned by constituent corporation in

case of corporate merger or consolidation. 49 A.L.R. Fed. 890.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2239 et seq.

CJS. 19 C.J.S., Corporations §§ 1617 et seq.

§ 79-4-11.04. Action on a plan of merger or share exchange.

In the case of a domestic corporation that is a party to a merger or share exchange:

(a) The plan of merger or share exchange must be adopted by the board of directors.

(b) Except as provided in subsection (g) and in Section 79-4-11.05, after adopting the plan of merger, the board of directors must submit the plan to the shareholders for their approval. After adopting the plan of share exchange, the board of directors of the corporation whose shares will be acquired in the share exchange must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan of merger or share exchange, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(e) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (c), requires a greater vote or a greater number of votes to be present, the approval of the plan of merger or share exchange shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(f) Separate voting by voting groups is required:

(1) On a plan of merger, by each class or series of shares that (A) are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, or (B) would have a right to vote as a separate group on a provision of the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under Section 79-4-10.04;

(2) On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(3) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger is not required if:

(1) The corporation will survive the merger; and

(2) Except for amendments permitted by Section 79-4-10.05, its articles of incorporation will not be changed; and

(3) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger will hold the same

number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(4) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(5) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty percent (20%) the total number of participating shares outstanding immediately before the merger.

(h) As used in subsection (g):

(1) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(2) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(i) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

SOURCES: Former 1972 Code § 79-4-11.04 [Laws, 1987, ch. 486, § 11.04] renumbered as § 79-4-11.05 by Laws, 2000, ch. 469, § 19. Former 1972 Code § 79-4-11.03 [Laws, 1987, ch. 486, § 11.03] amended and renumbered as § 79-4-11.04 by Laws, 2000, ch. 469, § 18, eff from and after July 1, 2000.

Editor's Note — This section, formerly appearing as § 79-4-11.03, was amended and renumbered as present § 79-4-11.04 by Laws of 2000, ch. 469, § 18. Former § 79-4-11.04 was amended and renumbered as present § 79-4-11.05 by Laws of 2000, ch. 469, § 19.

Cross References — Voting groups generally, see §§ 79-4-7.25, 79-4-7.26.

Voting on amendments by voting groups generally, see § 79-4-10.04.

Authorization for corporations to merge, see § 79-4-11.02.

Authorization for corporation to participate in share exchange, see § 79-4-11.03.

Effect of merger or share exchange, see § 79-4-11.07.

Abandonment of merger or share exchange, see § 79-4-11.08.

Shareholder's right to appraisal, see § 79-4-13.02.

Merger of corporations under Mississippi Nonprofit Corporation Act, see §§ 79-11-319 through 79-11-327.

Action on plan of merger under Limited Liability Company Act, see § 79-29-210.

RESEARCH REFERENCES

ALR. Products liability: liability of successor corporation for injury or damage caused by product issued by predecessor. 66 A.L.R.3d 824.

Who acquires rights under patent license owned by constituent corporation in case of corporate merger or consolidation. 49 A.L.R. Fed. 890.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2242, 2246.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:2250-74:2252 (merger and consolidation — termination of agreement), 74:2261 et seq., 74:2291 et seq.

20 Am. Jur. Proof of Facts 2d 609, De Facto Merger of Two Corporations.

CJS. 19 C.J.S., Corporations § 1611.

§ 79-4-11.05. Merger between parent and subsidiary or between subsidiaries.

(a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(b) If under subsection (a) approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as provided in subsections (a) and (b), a merger between a parent and a subsidiary shall be governed by the provisions of Title 79, Chapter 4, Article 11 applicable to mergers generally.

SOURCES: Former 1972 Code § 79-4-11.05 [Laws, 1987, ch. 486, § 11.05] renumbered as § 79-4-11.06 by Laws, 2000, ch. 469, § 20. Former 1972 Code § 79-4-11.04 [Laws, 1987, ch. 486, § 11.04] amended and renumbered as § 79-4-11.05 by Laws, 2000, ch. 469, § 19, eff from and after July 1, 2000.

Editor's Note — This section, formerly appearing as § 79-4-11.04, was amended and renumbered as present § 79-4-11.05 by Laws of 2000, ch. 469, § 19. Former § 79-4-11.05 was amended and renumbered as present § 79-4-11.06 by Laws of 2000, ch. 469, § 20.

Cross References — Shareholder's right to appraisal, see § 79-4-13.02.

Requirement that parent corporation, in a merger pursuant to this section, notify all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective, see § 79-4-13.20.

Materials to be included in notice to record shareholders required by § 79-4-13.20, see § 79-4-13.22.

Merger of corporations under Mississippi Nonprofit Corporation Act, see §§ 79-11-319 through 79-11-327.

RESEARCH REFERENCES

ALR. Liability of corporation for contracts of subsidiary. 38 A.L.R.3d 1102.

Similarity of ownership or control as basis for charging corporation acquiring assets of another with liability for former owner's debts. 49 A.L.R.3d 881.

Products liability: liability of successor corporation for injury or damage caused by product issued by predecessor. 66 A.L.R.3d 824.

Liability of successor corporation for

punitive damages for injury caused by predecessor's product. 55 A.L.R.4th 166.

Who acquires rights under patent license owned by constituent corporation in case of corporate merger or consolidation. 49 A.L.R. Fed. 890.

Am Jur. 19 Am. Jur. 2d, Corporations § 2243.

20 Am. Jur. Proof of Facts 2d 609, De Facto Merger of Two Corporations.

§ 79-4-11.06. Articles of merger or share exchange.

(a) After a plan of merger or share exchange has been adopted and approved as required by the Mississippi Business Corporation Act, articles of merger or share exchange shall be executed on behalf of each party to the merger or share exchange by any officer or other duly authorized representative. The articles shall set forth:

(1) The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;

(2) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(3) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Mississippi Business Corporation Act and the articles of incorporation;

(4) If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

(5) As to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the corporation or other entity is organized or by which it is governed, and by its articles of incorporation or organizational documents.

(b) Articles of merger or share exchange shall be delivered to the Secretary of State for filing by the survivor of the merger or the acquiring corporation in a share exchange and shall take effect on the effective date.

SOURCES: Former 1972 Code § 79-4-11.06 [Laws, 1987, ch. 486, § 11.06] renumbered as § 79-4-11.07 by Laws, 2000, ch. 469, § 21. Former 1972 Code § 79-4-11.05 [Laws, 1987, ch. 486, § 11.05] amended and renumbered as § 79-4-11.06 by Laws, 2000, ch. 469, § 20, eff from and after July 1, 2000.

Editor's Note — This section, formerly appearing as § 79-4-11.05, was amended and renumbered as present § 79-4-11.06 by Laws of 2000, ch. 469, § 20. Former § 79-4-11.06 was amended and renumbered as present § 79-4-11.07 by Laws of 2000, ch. 469, § 21.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq. Action on plan of merger or share exchange, see § 79-4-11.04.

Effect of merger or share exchange, see § 79-4-11.07.

Merger of corporations under Mississippi Nonprofit Corporation Act, see §§ 79-11-319 through 79-11-327.

Certificate of merger under Limited Liability Company Act, see § 79-29-211.

RESEARCH REFERENCES

ALR. Products liability: liability of successor corporation for injury or damage caused by product issued by predecessor. 66 A.L.R.3d 824.

Who acquires rights under patent license owned by constituent corporation in

case of corporate merger or consolidation. 49 A.L.R. Fed. 890.

Am Jur. 6A Am. Jur. Legal Forms 2d, Corporations §§ 74:1970, 74:2201, 74:2202, 74:2293-74:2295.

§ 79-4-11.07. Effect of merger or share exchange.

(a) When a merger becomes effective:

(1) The corporation or other entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(2) The separate existence of every corporation or other entity that is merged into the survivor ceases;

(3) All property owned by, and every contract right possessed by, each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment;

(4) All liabilities of each corporation or other entity that is merged into the survivor are vested in the survivor subject to the limitations as provided in Sections 79-33-1 through 79-33-9.

(5) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(6) The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;

(7) The articles of incorporation or organizational documents of a survivor that is created by the merger become effective; and

(8) The shares of each corporation that is a party to the merger, and the interests in an other entity that is a party to a merger, that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted and the former holders of such shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Title 79, Chapter 4, Article 13.

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests,

obligations, rights to acquire shares or securities, other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under Title 79, Chapter 4, Article 13.

(c) Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

(d) Upon a merger becoming effective, a foreign corporation, or a foreign other entity, that is the survivor of the merger is deemed to:

(1) Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(2) Agree that it will promptly pay the amount, if any, to which such shareholders are entitled under Title 79, Chapter 4, Article 13.

SOURCES: Former 1972 Code § 79-4-11.07 [Laws, 1987, ch. 486, § 11.07] deleted by Laws, 2000, ch. 469, § 21. Former 1972 Code § 79-4-11.06 [Laws, 1987, ch. 486, § 11.06] amended and renumbered as § 79-4-11.07 by Laws, 2000, ch. 469, § 21; Laws, 2004, ch. 353, § 8, eff from and after passage (approved Apr. 20, 2004.)

Editor's Note — This section, formerly appearing as § 79-4-11.06, was amended and renumbered as present § 79-4-11.07 by Laws of 2000, ch. 469, § 21.

A former § 79-4-11.07 [Laws, 1987, ch. 486, § 11.07, eff from and after January 1, 1988] pertaining to merger or share exchange with foreign corporations was deleted by Laws of 2000, ch. 469, § 21, effective from and after July 1, 2000.

Cross References — “Other entity” defined, see § 79-4-11.01.

Abandonment of merger or share exchange, see § 79-4-11.08.

Appraisal rights, Title 79, Chapter 4, Article 13, see §§ 79-4-13.01 through 79-4-13.40.

Merger of corporations under Mississippi Nonprofit Corporation Act, see §§ 79-11-319 through 79-11-327.

Effect of merger under Limited Liability Company Act, see § 79-29-212.

JUDICIAL DECISIONS

1. In general.

A corporate obligor and those who control it may not with impunity dissolve the corporation in a debt avoidance maneuver and cause its assets to be transferred to a new successor corporation. This is so whether the debt arises in contract, quasi-contract, or tort. Where a corporation unsuccessfully sought to avoid liability on a

contract with a former shareholder by dissolving the corporation and transferring assets to a newly formed corporation, the shareholder's rights against the new corporation were limited to the extent that the new corporation acquired assets of the contracting corporation without paying fair value therefor. *Morris v. Macione*, 546 So. 2d 969 (Miss. 1989).

RESEARCH REFERENCES

ALR. Tax liabilities as within agreement for assumption or payment of another's obligations. 4 A.L.R.2d 1314.

Dividend rights in surplus of new consolidated corporation resulting from reduction of capital stock of former constituent corporations. 28 A.L.R.2d 1177.

Merger or consolidation of corporation as terminating charitable trust of which corporation is beneficiary. 34 A.L.R.3d 749.

Dominant shareholder's accountability to minority for profit, bonus, or the like, received on sale of stock to outsiders. 38 A.L.R.3d 738.

Timeliness and sufficiency of dissenting stockholder's notice of his objection to con-

solidation or merger and of his demand for payment for his shares. 40 A.L.R.3d 260.

Products liability: liability of successor corporation for injury or damage caused by product issued by predecessor. 66 A.L.R.3d 824.

Merger or consolidation of corporate lease as breach of clause in lease prohibiting, conditioning, or restricting assignment or sublease. 39 A.L.R.4th 879.

Who acquires rights under patent license owned by constituent corporation in case of corporate merger or consolidation. 49 A.L.R. Fed. 890.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2249 et seq.

CJS. 19 C.J.S., Corporations §§ 1626 et seq.

§ 79-4-11.08. Abandonment of merger or share exchange.

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign other entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this article, and at any time before the merger or share exchange has become effective, it may be abandoned by any party thereto without action by the party's shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of a corporation, or the managers of an other entity, subject to any contractual rights of other parties to the merger or share exchange.

(b) If a merger or share exchange is abandoned under subsection (a) after articles of merger or share exchange have been filed with the Secretary of State but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, shall be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

SOURCES: Laws, 2000, ch. 469, § 22, eff from and after July 1, 2000.

Cross References — "Other entity" defined, see § 79-4-11.01.

Abandonment of merger under Limited Liability Company Act, see § 79-29-213.

Merger of corporations under Mississippi Nonprofit Corporation Act, see §§ 79-11-319 through 79-11-327.

ARTICLE 12.

SALE OF ASSETS.

SEC.

- 79-4-12.01. Disposition of assets not requiring shareholder approval.
- 79-4-12.02. Disposition of assets requiring shareholder approval.

§ 79-4-12.01. Disposition of assets not requiring shareholder approval.

No approval of the shareholders of a corporation is required, unless the articles of incorporation otherwise provide:

- (1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;
- (2) To mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse) or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;
- (3) To transfer any or all of the corporation's assets to one or more corporations or other entities all of the shares or interests of which are owned by the corporation; or
- (4) To distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

SOURCES: Laws, 1987, ch. 486, § 12.01; Laws, 2000, ch. 469, § 23, eff from and after July 1, 2000.

Cross References — Disposition of assets requiring shareholder approval, see § 79-4-12.02.

Disposition of corporation assets under Mississippi Nonprofit Corporation Act, see §§ 79-11-329, 79-11-331.

JUDICIAL DECISIONS

I. Under Current Law.

- 1.-10. [Reserved for future use.]

II. Under Former § 79-3-155.

- 11. In general.

I. Under Current Law.

- 1.-10. [Reserved for future use.]

II. Under Former § 79-3-155.

- 11. In general.

Deeds of trust and security agreement, taken together, and which mortgaged to plaintiff all or substantially all of the

property of the corporation were invalid under Mississippi law where: (1) they were not made in the regular corporation course of business; (2) the mortgage was not a purchase money mortgage except as to supplies subsequently delivered; (3) corporation was not in the business of buying and selling real estate or business equipment; (4) no notice of the mortgage was given to the shareholders; and (5) there was no meeting of the stockholders authorizing or consenting to the mortgage. *James Calvin Belk Constr. Co. v. S.F. Kennedy New Prods., Inc.*, 4 B.R. 132 (Bankr. N.D. Miss. 1980).

RESEARCH REFERENCES

ALR. Applicability of statutes regulating sale of assets or property of corporation as affected by purpose or character of corporation. 9 A.L.R.2d 1306.

Right of corporate officer to purchase corporate assets from corporation. 24 A.L.R.2d 71.

Who may assert invalidity of sale, mortgage, or other disposition of corporate property without approval of stockholders. 58 A.L.R.2d 784.

Right or duty of corporation to refuse to transfer stock on presentation of properly

indorsed certificate, because of conflicting rights or claims of one other than transferee. 75 A.L.R.2d 746.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1791, 1792.

16 Am. Jur. Legal Forms 2d, Sale of Business §§ 226:191 et seq. (sale of corporate assets).

CJS. 19 C.J.S., Corporations § 1102.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-12.02. Disposition of assets requiring shareholder approval.

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in Section 79-4-12.01, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five (25%) of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a), and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) require a greater vote, or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(f) After a disposition has been approved by the shareholders under subsection (b), and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under Title 79, Chapter 4, Article 14 is not governed by this section.

(h) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

SOURCES: Laws, 1987, ch. 486, § 12.02; Laws, 2000, ch. 469, § 24, eff from and after July 1, 2000.

Cross References — Disposition of assets not requiring shareholder approval, see § 79-4-12.01.

Dissolution generally, Title 79, Chapter 4, Article 14, see §§ 79-4-14.01 through 79-4-14.40.

Shareholder's right to appraisal, see § 79-4-13.02.

Disposition of corporation assets under Mississippi Nonprofit Corporation Act, see §§ 79-11-329, 79-11-331.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

2.-10. [Reserved for future use.]

II. Under Former § 79-3-157.

11. In general.

I. Under Current Law.

1. In general.

A corporate obligor and those who control it may not with impunity dissolve the corporation in a debt avoidance maneuver and cause its assets to be transferred to a new successor corporation. This is so whether the debt arises in contract, quasi-contract, or tort. Where a corporation unsuccessfully sought to avoid liability on a contract with a former shareholder by dissolving the corporation and transferring assets to a newly formed corporation, the shareholder's rights against the new corporation were limited to the extent that the new corporation acquired assets of the contracting corporation without

paying fair value therefor. *Morris v. Macione*, 546 So. 2d 969 (Miss. 1989).

2.-10. [Reserved for future use.]

II. Under Former § 79-3-157.

11. In general.

Deeds of trust and security agreement, taken together, and which mortgaged to plaintiff all or substantially all of the property of the corporation were invalid under Mississippi law where: (1) they were not made in the regular corporation course of business; (2) the mortgage was not a purchase money mortgage except as to supplies subsequently delivered; (3) corporation was not in the business of buying and selling real estate or business equipment; (4) no notice of the mortgage was given to the shareholders; and (5) there was no meeting of the stockholders authorizing or consenting to the mortgage. *James Calvin Belk Constr. Co. v. S.F. Kennedy New Prods., Inc.*, 4 B.R. 132 (Bankr. N.D. Miss. 1980).

RESEARCH REFERENCES

ALR. Applicability of statutes regulating sale of assets or property of corporation as affected by purpose or character of corporation. 9 A.L.R.2d 1306.

Right of corporate officer to purchase corporate assets from corporation. 24 A.L.R.2d 71.

Who may assert invalidity of sale, mortgage, or other disposition of corporate property without approval of stockholders. 58 A.L.R.2d 784.

Validity of agreement in conjunction

with sale of corporate shares that majority of directors will be replaced by purchaser's designees. 13 A.L.R.3d 361.

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1791 et seq.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:2301 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 441 et seq.

5 Am. Jur. Proof of Facts 505, Good Will.

CJS. 19 C.J.S., Corporations § 1102.

ARTICLE 13.

APPRAISAL RIGHTS.

Subarticle A.	Right to Appraisal and Payment for Shares.....	79-4-13.01
Subarticle B.	Procedure for Exercise of Appraisal Rights.....	79-4-13.20
Subarticle C.	Judicial Appraisal of Shares.....	79-4-13.30
Subarticle D.	Other Remedies.....	79-4-13.40

SUBARTICLE A.

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES.

SEC.

79-4-13.01.	Definitions.
79-4-13.02.	Right to appraisal.
79-4-13.03.	Assertion of appraisal rights by nominees and beneficial owners.

§ 79-4-13.01. Definitions.

In this article:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of Section 79-4-13.02(b)(5), a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in Sections 79-4-13.22 through 79-4-13.31, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:

(i) Immediately before the effectuation of the corporate action to which the shareholder objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to Section 79-4-13.02(a)(5).

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(5.1) "Interested transaction" means a corporate action described in Section 79-4-13.02(a), other than a merger pursuant to Section 79-4-11.05, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

(i) "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action: (A) was the beneficial owner of twenty percent (20%) or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if the offer was made within one (1) year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; (B) had the power, contractually or otherwise to cause the appointment or election of twenty-five percent (25%) or more of the directors to the board of directors of the corporation; or (C) was a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than: (1) employment, consulting, retirement, or similar benefits established separately and not as part of, or in contemplation of, the corporate action; or (2) employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in Section 79-4-8.62; or (3) in the case of a director of the corporation who will, in the corporate action become a director of the acquiring entity in the corporate action, or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(ii) "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the

exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two (2) or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(6) “Preferred shares” means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(7) “Record shareholder” means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

(8) “Senior executive” means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(9) “Shareholder” means both a record shareholder and a beneficial shareholder.

SOURCES: Laws, 1987, ch. 486, § 13.01; Laws, 1988, ch. 369, § 5; Laws, 2000, ch. 469, § 28; Laws, 2002, ch. 333, § 1; Laws, 2007, ch. 361, § 8, *eff from and after* July 1, 2007.

Amendment Notes — The 2007 amendment added (5.1).

Cross References — Interest on judgments and decrees, see § 75-17-7.

Appraisal rights under Limited Liability Company Act, see § 79-29-214.

Requirement that plan of reorganization of stock savings bank to ownership by holding company contain dissenters’ rights as provided under §§ 79-4-13.01 et seq., see § 81-14-401.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. §§ 682, 683 et seq.

Law Reviews. Holmes, The revised L. J. 271, August, 1987.

§ 79-4-13.02. Right to appraisal.

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder’s shares, in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by Section 79-4-11.04 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger, or (ii) if the corporation is a subsidiary and the merger is governed by Section 79-4-11.05;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to Section 79-4-12.02 if the shareholder is entitled to vote on the disposition;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or

(5) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors.

(b) Notwithstanding subsection (a), the availability of appraisal rights under subsection (a)(1), (2), (3) and (4) shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available to any shareholder of the constituent corporations in a corporate reorganization transaction otherwise covered by Section 79-4-13.02(a)(1) or (2) if: (i) the shareholders of an existing corporation exchange shares of such corporation for shares of a newly formed corporation and receive, after the reorganization, the same proportionate share interest in the new corporation and the rights and interests of the shareholders in the newly formed corporation are substantially the same as those in the existing corporation prior to the transaction; (ii) the newly formed corporation has no significant assets other than the shares of the existing corporation; (iii) after the reorganization the newly formed corporation and its subsidiaries have substantially the same assets and liabilities, on a consolidated basis, as those of the existing corporation prior to the transaction; (iv) fractional shares are neither created nor eliminated as a result of the transaction; (v) the existing corporation and the newly formed corporation are the only constituent corporations to such reorganization; (vi) the existing corporation and the newly formed corporation are corporations of this state; (vii) the directors of the existing corporation become the directors of the newly formed corporation upon the effective time of the corporate reorganization; (viii) the existing corporation becomes a direct wholly-owned subsidiary of the newly formed corporation; and (ix) the shareholders of the existing corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the existing corporation.

(2) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

(ii) Not so listed or designated, but has at least two thousand (2,000) shareholders and the outstanding shares of such class or series has a market value of at least Twenty Million Dollars (\$20,000,000.00) (exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares).

(3) The applicability of subsection (b)(2) shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders.

(4) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (b)(2) at the time the corporate action becomes effective.

(5) Subsection (b)(2) shall not be applicable and appraisal rights shall be available pursuant to subsection (a) for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of Section 79-4-13.02, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or to other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one (1) year of that date if such action would otherwise afford appraisal rights.

SOURCES: Laws, 1987, ch. 486, § 13.02; Laws, 1990, ch. 411, § 7; Laws, 2000, ch. 469, § 29; Laws, 2001, ch. 435, § 14; Laws, 2007, ch. 361, § 9, eff from and after July 1, 2007.

Editor's Note — Laws of 1990, ch. 411, § 8, provides as follows:

"SECTION 8. The provisions of this act are severable. If any provision is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application."

Amendment Notes — The 2007 amendment added "the corporate action is an interested transaction" to the end of (b)(5); deleted former (b)(5)(i) through (b)(6); and deleted former (d).

Cross References — Rights of former holders of shares of corporation that is party to merger or share exchange, which shares are to be converted into other shares, obligations, securities or cash or property, see § 79-4-11.07.

Requirement that surviving foreign corporation of merger and acquiring foreign corporation of share exchange agree to give appraisal rights to shareholders of domestic corporations party to merger or share exchange, pursuant to Article 13, see § 79-4-11.07.

Legality of proposed or completed action described in this section maybe contested and action enjoined, set aside or rescinded after shareholder approval of the action under certain circumstances, see § 79-4-13.40.

Mississippi Control Share Act, see §§ 79-27-1 et seq.

Appraisal rights under Limited Liability Company Act, see § 79-29-214.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-161.

11. In general.

12. Determination of fair value.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-161.

11. In general.

The fair value of stock is a purely factual question, and it was within the province of the chancellor, as the trier of fact, to evaluate the evidence, resolve any conflict, and to ascertain the fair value of stock to be paid by a corporation to those shareholders who dissented to a merger. *Cal-Maine Foods, Inc. v. Duvic*, 264 So. 2d 383 (Miss. 1972).

12. Determination of fair value.

Under circumstances of instant case, trial court did not err in finding fair value of dissenting stockholders' shares of bank to be \$100 per share, notwithstanding dissenting stockholders' contention that court resorted to wrong methodology when it computed both market value and

investment value of shares. *Hernando Bank v. Huff*, 796 F.2d 803 (5th Cir. 1986).

Statutory prohibition against consideration of appreciation or depreciation in anticipation of corporate merger does not exclude consideration of purchase offers made for comparable corporations; in case of offer for comparable company, relevance of purchase offer is not diminished due to consummation of sale; minority discount is proper in determining fair value of stock of dissenters; in determining fair value of stock, court considers market value, asset value, and investment or earnings value; costs and expenses of proceeding which are assessed against corporation where dissenting shareholders were justified in not accepting offer do not include fees of counsel, although fees and expenses of experts may be allowed if court determines that fair value of shares as determined materially exceeds offer of corporation; interest on award accrues from date on which vote was taken on proposed corporate action, and court uses rate of return in effect for one-year certificate of deposit of that date. *Hernando Bank v. Huff*, 609 F. Supp. 1124 (N.D. Miss. 1985), *aff'd*, 796 F.2d 803 (5th Cir. 1986).

RESEARCH REFERENCES

ALR. Dominant shareholder's accountability to minority for profit, bonus, or the like, received on sale of stock to outsiders. 38 A.L.R.3d 738.

Timeliness and sufficiency of dissenting stockholder's notice of his objection to con-

solidation or merger and of his demand for payment for his shares. 40 A.L.R.3d 260.

Right of corporation to discharge employee who asserts rights as stockholder. 84 A.L.R.3d 1107.

Propriety of applying minority discount

to value of shares purchased by corporation or its shareholders from minority shareholders. 13 A.L.R.5th 840.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 683, 684.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:2267-74:2273.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 411 et seq.

CJS. 18 C.J.S., Corporations §§ 612-627.

§ 79-4-13.03. Assertion of appraisal rights by nominees and beneficial owners.

(a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in Section 79-4-13.22(b)(2)(ii); and

(2) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

SOURCES: Laws, 1987, ch. 486, § 13.03; Laws, 2000, ch. 469, § 30, eff from and after July 1, 2000.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 683, 684.

SUBARTICLE B.

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS.

SEC.

- 79-4-13.20. Notice of appraisal rights.
- 79-4-13.21. Notice of intent to demand payment and consequences of voting or consenting.
- 79-4-13.22. Appraisal notice and form.
- 79-4-13.23. Perfection of rights; right to withdraw.
- 79-4-13.24. Payment.
- 79-4-13.25. After-acquired shares.
- 79-4-13.26. Procedure if shareholder dissatisfied with payment or offer.

79-4-13.27. Renumbered.

79-4-13.28. Renumbered.

§ 79-4-13.20. Notice of appraisal rights.

(a) Where any corporate action specified in Section 79-4-13.02(a) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not or may be entitled to assert appraisal rights under this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to Section 79-4-11.05, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten (10) days after the corporate action became effective and include the materials described in Section 79-4-13.22.

(c) Where any corporate action specified in Section 79-4-13.02(a) is to be approved by written consent of the shareholders pursuant to Section 79-4-7.04:

(1) Written notice that appraisal rights are, are not or may be available must be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article; and

(2) Written notice that appraisal rights are, are not or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by Section 79-4-7.04(e) and (f), may include the materials described in Section 79-4-13.22 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article.

SOURCES: Laws, 1987, ch. 486, § 13.20; Laws, 2000, ch. 469, § 31; Laws, 2007, ch. 361, § 10, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment substituted "Where any corporate action specified" for "If proposed corporate action described" in the first sentence in (a); added (c); and made a minor stylistic change.

Cross References — Assessment of court costs and expenses in appraisal proceeding against corporation for failure to substantially comply with this section, see § 79-4-13.131.

Notice of appraisal rights under Limited Liability Company Act, see § 79-29-214.

RESEARCH REFERENCES

Am Jur. 6A Am. Jur. Legal Forms 2d, Corporations § 74:2267.

§ 79-4-13.21. Notice of intent to demand payment and consequences of voting or consenting.

(a) If a corporate action specified in Section 79-4-13.02(a) is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(1) Must deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(2) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(b) If a corporate action specified in Section 79-4-13.02(a) is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not execute a consent in favor of the proposed action with respect to that class or series of shares.

(c) A shareholder who fails to satisfy the requirements of subsection (a) or (b) is not entitled to payment under this article.

SOURCES: Laws, 1987, ch. 486, § 13.21; Laws, 2000, ch. 469, § 32; Laws, 2007, ch. 361, § 11, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment in (a), substituted "a corporate" for "proposed corporate" and "specified in" for "requiring appraisal rights under"; added (b) and redesignated former (b) as present (c); in (c), substituted "fails to satisfy" for "does not satisfy," and inserted "or (b)"; and made minor stylistic changes.

RESEARCH REFERENCES

ALR. Dominant shareholder's accountability to minority for profit, bonus, or the like, received on sale of stock to outsiders. 38 A.L.R.3d 738.

Timeliness and sufficiency of dissenting stockholder's notice of his objection to consolidation or merger and of his demand for payment for his shares. 40 A.L.R.3d 260.

Valuation of stock of dissenting stockholders in case of consolidation or merger of corporation, sale of its assets, or the like. 48 A.L.R.3d 430.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 691-697.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:2267-74:2270, 74:2273.

§ 79-4-13.22. Appraisal notice and form.

(a) If proposed corporate action requiring appraisal rights under Section 79-4-13.02(a) becomes effective, the corporation must deliver a written appraisal notice and form required by subsection (b)(1) to all shareholders who satisfied the requirements of Section 79-4-13.21(a) or Section 79-4-13.21(b). In the case of a merger under Section 79-4-11.05, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice must be sent no earlier than the date the corporate action specified in Section 79-4-13.02(a) became effective and no later than ten (10) days after such date, and must:

(1) Supply a form that (i) specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action, if any, and (ii) if such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date and that, as to those shares, the shareholder did not vote for or consent to the transaction;

(2) State:

(i) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (2)(ii);

(ii) A date by which the corporation must receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (a) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

(iii) The corporation's estimate of the fair value of the shares;

(iv) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within ten (10) days after the date specified in subsection (2) (ii) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(v) The date by which the notice to withdraw under Section 79-4-13.23 must be received, which date must be within twenty (20) days after the date specified in subsection (2)(ii); and

(3) Be accompanied by a copy of this article.

SOURCES: Laws, 1987, ch. 486, § 13.22; Laws, 2000, ch. 469, § 33; Laws, 2007, ch. 361, § 12, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment substituted “Section 79-4-13.21(a) or Section 79-4-13.21(b)” for “Section 79-4-13-21” at the end of the first sentence in (a); inserted “specified in Section 79-4-13.02(a)” in (b); and substituted “earlier than” for “earlier than” in (2)(i).

Cross References — Assessment of court costs and expenses in appraisal proceeding against corporation for failure to substantially comply with this section, see § 79-4-13.131.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations
§§ 698-699.

6A Am. Jur. Legal Forms 2d, Corporations § 74:2267.

§ 79-4-13.23. Perfection of rights; right to withdraw.

(a) A shareholder who receives notice pursuant to Section 79-4-13.22 and who wishes to exercise appraisal rights must sign and return on the form sent by the corporation and, in the case of certificated shares, deposit the share-

holder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to Section 79-4-13.22(b)(2)(ii). In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to Section 79-4-13.22(b)(1). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under Section 79-4-13.25. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (b).

(b) A shareholder who has complied with subsection (a) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to Section 79-4-13.22(b)(2)(v). A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in Section 79-4-13.22(b), shall not be entitled to payment under this article.

SOURCES: Laws, 1987, ch. 486, § 13.23; Laws, 2000, ch. 469, § 34; Laws, 2007, ch. 361, § 13, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment rewrote (a); and substituted "sign" for "execute" in (c).

RESEARCH REFERENCES

ALR. Dominant shareholder's accountability to minority for profit, bonus, or the like, received on sale of stock to outsiders. 38 A.L.R.3d 738.

Timeliness and sufficiency of dissenting stockholder's notice of his objection to con-

solidation or merger and of his demand for payment for his shares. 40 A.L.R.3d 260.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 691-697.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:2267-74:2270.

§ 79-4-13.24. Payment.

(a) Except as provided in Section 79-4-13.25, within thirty (30) days after the form required by Section 79-4-13.22(b)(2)(ii) is due, the corporation shall pay in cash to those shareholders who complied with Section 79-4-13.23(a) the amount the corporation estimates to be the fair value of their shares, plus interest.

(b) The payment to each shareholder pursuant to subsection (a) must be accompanied by:

(1) Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income

statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(2) A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to Section 79-4-13.22(b)(2)(iii); and

(3) A statement that shareholders described in subsection (a) have the right to demand further payment under Section 79-4-13.26 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this chapter.

SOURCES: Former 1972 Code § 79-4-13.24 [Laws, 1987, ch. 486, § 13.24] deleted by Laws, 2000, ch. 469, § 35. Former 1972 Code § 79-4-13.25 [Laws, 1987, ch. 486, § 13.25] amended and renumbered as § 79-4-13.24 by Laws, 2000, ch. 469, § 35, eff from and after July 1, 2000.

Editor's Note — This section, formerly appearing as § 79-4-13.25, was amended and renumbered as present § 79-4-13.24 by Laws of 2000, ch. 469, § 35.

A former § 79-4-13.24 [Laws, 1987, ch. 486, § 13.24, eff from and after January 1, 1988], pertaining to share restrictions, was deleted by Laws of 2000, ch. 469, § 35, effective from and after July 1, 2000.

Cross References — Procedure if shareholder dissatisfied with payment or after made pursuant to this section or § 79-4-13.25, see § 79-4-13.26.

Assessment of court costs and expenses in appraisal proceeding against corporation for failure to substantially comply with this section, see § 79-4-13.131.

RESEARCH REFERENCES

ALR. Valuation of stock of dissenting stockholders in case of consolidation or merger of corporation, sale of its assets, or the like. 48 A.L.R.3d 430.

Construction and operation of statute restricting corporation's right to purchase its own stock to purchase from surplus. 61 A.L.R.3d 1049.

Propriety of applying minority discount to value of shares purchased by corporation or its shareholders from minority shareholders. 13 A.L.R.5th 840.

Am Jur. 18A Am. Jur. 2d, Corporations § 699.

6A Am. Jur. Legal Forms 2d, Corporations § 74:2271.

§ 79-4-13.25. After-acquired shares.

(a) A corporation may elect to withhold payment required by Section 79-4-13.24 from any shareholder who was required to, but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to Section 79-4-13.22(b)(1).

(b) If the corporation elected to withhold payment under subsection (a), it must, within thirty (30) days after the form required by Section 79-4-13.22(b)(2)(ii) is due, notify all shareholders who are described in subsection (a):

(1) Of the information required by Section 79-4-13.24(b)(1);

(2) Of the corporation's estimate of fair value pursuant to Section 79-4-13.24(b)(2);

(3) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under Section 79-4-13.26;

(4) That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within thirty (30) days after receiving the offer; and

(5) That those shareholders who do not satisfy the requirements for demanding appraisal under Section 79-4-13.26 shall be deemed to have accepted the corporation's offer.

(c) Within ten (10) days after receiving the shareholder's acceptance pursuant to subsection (b), the corporation must pay in cash the amount it offered under subsection (b)(2) to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(d) Within forty (40) days after sending the notice described in subsection (b), the corporation must pay in cash the amount it offered to pay under subsection (b)(2) to each shareholder described in subsection (b)(5).

SOURCES: Former 1972 Code § 79-4-13.25 [Laws, 1987, ch. 486, § 13.25] renumbered as § 79-4-13.24 by Laws, 2000, ch. 469, § 35. Former 1972 Code § 79-4-13.27 [Laws, 1987, ch. 486, § 13.27] amended and renumbered as § 79-4-13.25 by Laws, 2000, ch. 469, § 36; Laws, 2007, ch. 361, § 14, eff from and after July 1, 2007.

Editor's Note — This section, formerly appearing as § 79-4-13.27, was amended and renumbered as present § 79-4-13.25 by Laws of 2000, ch. 469, § 36. Former § 79-4-13.25 was amended and renumbered as present § 79-4-13.24 by Laws of 2000, ch. 469, § 35.

Amendment Notes — The 2007 amendment inserted "was required to, but" following "any shareholder who" in (a).

Cross References — Procedure if shareholder dissatisfied with payment or after made pursuant to this section or § 79-4-13.25, see § 79-4-13.26.

Court action to determine fair value of shares of shareholder's after-acquired shares for which corporation elected to withhold payment under this section, see § 79-4-13.30.

Assessment of court costs and expenses in appraisal proceeding against corporation for failure to substantially comply with this section, see § 79-4-13.131.

§ 79-4-13.26. Procedure if shareholder dissatisfied with payment or offer.

(a) A shareholder paid pursuant to Section 79-4-13.24 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest (less any payment under Section 79-4-13.24). A shareholder offered payment under Section 79-4-13.25 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) within thirty (30) days after receiving the corporation's payment or offer of payment under Section 79-4-13.24 or

Section 79-4-13.25, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

SOURCES: Former 1972 Code § 79-4-13.26 [Laws, 1987, ch. 486, § 13.26] deleted by Laws, 2000, ch. 469, § 37. Former 1972 Code § 79-4-13.28 [Laws, 1987, ch. 486, § 13.28] amended and renumbered as § 79-4-13.26 by Laws, 2000, ch. 469, § 37, eff from and after July 1, 2000.

Editor's Note — This section, formerly appearing as § 79-4-13.28, was amended and renumbered as present § 79-4-13.26 by Laws of 2000, ch. 469, § 37.

A former § 79-4-13.26 [Laws, 1987, ch. 486, § 13.26, eff from and after January 1, 1988], pertaining to failure to take action, was deleted by Laws of 2000, ch. 469, § 37, effective July 1, 2000.

Cross References — Commencement of court proceeding by corporation to determine fair value of shares and accrued interest if demand for payment under this section remains unsettled, see § 79-4-13.30.

Assessment of costs of appraisal proceeding against corporation, see § 79-4-13.31.

RESEARCH REFERENCES

ALR. Dominant shareholder's accountability to minority for profit, bonus, or the like, received on sale of stock to outsiders. 38 A.L.R.3d 738.

Timeliness and sufficiency of dissenting stockholder's notice of his objection to con-

solidation or merger and of his demand for payment for his shares. 40 A.L.R.3d 260.

Propriety of applying minority discount to value of shares purchased by corporation or its shareholders from minority shareholders.

§ 79-4-13.27. Renumbered.

Renumbered as § 79-4-13.25 by Laws, 2000, ch. 469, § 36.

Editor's Note — Laws of 2000, ch. 469, § 36, renumbered and amended former § 79-4-13.27 as present § 79-4-13.25.

§ 79-4-13.28. Renumbered.

Renumbered as § 79-4-13.26 by Laws, 2000, ch. 469, § 37.

Editor's Note — Laws of 2000, ch. 469, § 37, renumbered and amended former § 79-4-13.28 as present § 79-4-13.26.

SUBARTICLE C.

JUDICIAL APPRAISAL OF SHARES.

SEC.

79-4-13.30. Court action.

79-4-13.31. Court costs and expenses.

§ 79-4-13.30. Court action.

(a) If a shareholder makes demand for payment under Section 79-4-13.26 which remains unsettled, the corporation shall commence a proceeding within

sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to Section 79-4-13.26 plus interest.

(b) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office (or, if none, its registered office) in this state is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each shareholder made a party to the proceeding is entitled to judgment (i) for the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares or (ii) for the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under Section 79-4-13.25.

SOURCES: Laws, 1987, ch. 486, § 13.30; Laws, 2000, ch. 469, § 38, eff from and after July 1, 2000.

Cross References — Procedure for shareholder assertion of appraisal rights, see § 79-4-13.21.

Appraisal notice and form, see § 79-4-13.22.

Assessment of all costs of appraisal proceeding commenced under this section against corporation, see § 79-4-13.31.

RESEARCH REFERENCES

ALR. Construction and operation of statute restricting corporation's right to purchase its own stock to purchase from surplus. 61 A.L.R.3d 1049.

Place where corporation is doing busi-

ness for purposes of state venue statute. 42 A.L.R.5th 221.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 700 et seq.

§ 79-4-13.31. Court costs and expenses.

(a) The court in an appraisal proceeding commenced under Section 79-4-13.30 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts which the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this article.

(b) The court in an appraisal proceeding may also assess the expenses of the respective parties in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of Section 79-4-13.20, 79-4-13.22, 79-4-13.24 or 79-4-13.25; or

(2) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this article.

(c) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated, and that such expenses should not be assessed against the corporation, the court may direct that such expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to Section 79-4-13.24, 79-4-13.25 or 79-4-13.26, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

SOURCES: Laws, 1987, ch. 486, § 13.31; Laws, 2000, ch. 469, § 39; Laws, 2007, ch. 361, § 15, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment inserted “court” preceding “costs” throughout (a); substituted “assess the expenses of the respective parties” for “assess the fees and expenses of counsel and experts for the respective parties” in (b); deleted “fees and” preceding “expenses” in (b)(2); in (c), substituted “expenses incurred by” for “services of counsel for,” “such expenses” for “the fees,” and “direct that such expenses” for “award to such counsel reasonable fees”; and substituted “all expenses of the suit” for “all costs and expenses of the suit, including counsel fees” at the end of (d).

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations
§ 705.

SUBARTICLE D.

OTHER REMEDIES.

SEC.

79-4-13.40. Other remedies limited.

§ 79-4-13.40. Other remedies limited.

(a) The legality of a proposed or completed corporate action described in Section 79-4-13.02(a) may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) does not apply to a corporate action that:

(1) Was not authorized and approved in accordance with the applicable provisions of:

(i) Article 9, 10, 11 or 12,

(ii) The articles of incorporation or bylaws, or

(iii) The resolution of the board of directors authorizing the corporate action;

(2) Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(3) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in Section 79-4-8.62 and has been approved by the shareholders in the same manner as is provided in Section 79-4-8.63 as if the interested transaction were a director's conflicting interest transaction; or

(4) Is approved by less than unanimous consent of the voting shareholders pursuant to Section 79-4-7.04 if:

(i) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected; and

(ii) The proceeding challenging the corporate action is commenced within ten (10) days after notice of the approval of the corporation action is effective as to the shareholder bringing the proceeding.

SOURCES: Laws, 2007, ch. 361, § 16, eff from and after July 1, 2007.

ARTICLE 14.

DISSOLUTION.

Subarticle A.	Voluntary Dissolution.....	79-4-14.01
Subarticle B.	Administrative Dissolution.....	79-4-14.20
Subarticle C.	Judicial Dissolution.....	79-4-14.30
Subarticle D.	Miscellaneous.....	79-4-14.40

SUBARTICLE A.

VOLUNTARY DISSOLUTION.

SEC.

- 79-4-14.01. Dissolution by incorporators or initial directors.
- 79-4-14.02. Dissolution by board of directors and shareholders.
- 79-4-14.03. Articles of dissolution.
- 79-4-14.04. Revocation of dissolution.
- 79-4-14.05. Effect of dissolution.
- 79-4-14.06. Known claims against dissolved corporation.
- 79-4-14.07. Unknown claims against dissolved corporation.
- 79-4-14.08. Dissolved corporations — chancery court proceedings for security payment of claims; notice; guardian ad litem; satisfaction of claim.
- 79-4-14.09. Payment of claims and distribution of assets of dissolved corporations; liability.

§ 79-4-14.01. Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) Either (i) that none of the corporation's shares has been issued, or (ii) that the corporation has not commenced business;
- (4) That no debt of the corporation remains unpaid;
- (5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
- (6) That a majority of the incorporators or initial directors authorized the dissolution.

SOURCES: Laws, 1987, ch. 486, § 14.01 eff from and after January 1, 1988.

Cross References — Disposition of assets in the cause of dissolution under this article not governed by § 79-4-12.02, disposition of assets requiring shareholder approval, see § 79-4-12.02.

Voluntary dissolution of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-333 through 79-11-345.

RESEARCH REFERENCES

ALR. Dissolving or winding up affairs of corporation domiciled in another state. 19 A.L.R.3d 1279.

What amounts to "oppressive" conduct under statute authorizing dissolution of

corporation at suit of minority stockholders. 56 A.L.R.3d 358.

Dissolution of corporation on ground of intracorporate deadlock or dissension. 83 A.L.R.3d 458.

Availability of and time for bringing action against former director, officer, or stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2348 et seq.

6A Am. Jur. Legal Forms 2d, Corporations § 74:2433.

CJS. 19 C.J.S., Corporations §§ 1684 et seq.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-14.02. Dissolution by board of directors and shareholders.

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

SOURCES: Laws, 1987, ch. 486, § 14.02; Laws, 2000, ch. 469, § 25, eff from and after July 1, 2000.

Cross References — Filing of notice to adopt articles of dissolution pursuant to this section as affecting elective buyout of shareholder petitioning to dissolve corporation shares of which are not listed or regularly traded, see § 79-4-14.34.

Voluntary dissolution of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-333 through 79-11-345.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-165.

12. Under former § 79-3-167.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-165.

Although it is the general rule that there is no legal dissolution or surrender of the charter of a nonstock corporation until so decreed pursuant to this section [Code 1942, § 5352], a court of equity may in a proper case treat the corporation as dissolved, even though in a legal sense no dissolution has occurred, and a dissolution may be implied as by consent of all the members when the meetings are voluntarily discontinued and activity of members of such comes to an end. *Woodville Lodge, No. 3581 v. Poole*, 190 Miss. 798, 1 So. 2d 780 (1941).

An agreement between the existing members of a local lodge of a fraternal society to abandon the lodge as such and to discontinue its corporate functions, to divide up the personal property, together with an arrangement to rent the property and share in the rent thereof, was effective to determine the status of the parties thereto as tenants in common as would have been their status after formal surrender, notwithstanding there was no legal dissolution. *Woodville Lodge, No. 3581 v. Poole*, 190 Miss. 798, 1 So. 2d 780 (1941).

Under the law and pursuant to the notice to creditors if any there were, one would be entitled, if in fact he was a creditor, to appear and establish his claim

and have the same fixed as a charge against the assets of the corporation in the hands of such persons to whom the same would pass upon a dissolution thereof. *Ex parte Woodville Lodge No. 3581, Grand United Order of Odd Fellows*, 186 Miss. 490, 191 So. 89 (1939).

A demurrer by an alleged creditor confessed the allegation of fact in a petition to dissolve a corporation to the effect that there were no debts owing by the corporation and that hence there were no creditors. *Ex parte Woodville Lodge No. 3581, Grand United Order of Odd Fellows*, 186 Miss. 490, 191 So. 89 (1939).

One alleging to be a creditor of a corporation seeking dissolution was not entitled to bring into issue by demurrer the allegation of the petition for dissolution that there were no debts, nor could such one challenge the legal sufficiency of the petition as to whether certain persons were alone entitled to share in the corporate assets as the sole remaining stockholders without first obtaining leave of the court, upon a proper showing, to intervene as a party, or to appear as *amicus curiae*. *Ex parte Woodville Lodge No. 3581, Grand United Order of Odd Fellows*, 186 Miss. 490, 191 So. 89 (1939).

12. Under former § 79-3-167.

An agreement for the merger of corporations was not invalid merely because it did not contain any reference to preference to preferred shareholders of the corporation being acquired, since, assuming that all preferred shareholders were opposed to dissolution, it could be fairly implied by the terms of the agreement that they would be paid their interest in cash as dissenting shareholders, as required by Mississippi law. *Mid-Continent Tel. Corp. v. Home Tel. Co.*, 319 F. Supp. 1176 (N.D. Miss. 1970).

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2360 et seq.

6A Am. Jur. Legal Forms 2d, Corporations §§ 74:2391 et seq., 74:2431 et seq.

CJS. 19 C.J.S., Corporations §§ 1684 et seq.

§ 79-4-14.03. Articles of dissolution.

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized; and

(3) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by the Mississippi Business Corporation Act and by the articles of incorporation.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this subarticle, “dissolved corporation” means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

SOURCES: Laws, 1987, ch. 486, § 14.03; Laws, 2000, ch. 469, § 26; Laws, 2001, ch. 435, § 15, eff from and after July 1, 2001.

Cross References — Requirement that articles of revocation of dissolution set forth the information required by this section, see § 79-4-14.04.

Filing of notice to adopt articles of dissolution pursuant to this section as affecting elective buyout of shareholder petitioning to dissolve corporation whose shares are not listed or regularly traded, see § 79-4-14.34.

Voluntary dissolution of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-333 through 79-11-345.

RESEARCH REFERENCES

Am Jur. 6A Am. Jur. Legal Forms 2d,
Corporations §§ 74:2436-74:2444.

§ 79-4-14.04. Revocation of dissolution.

(a) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(6) If shareholder action was required to revoke the dissolution, the information required by Section 79-4-14.03(a)(3).

(d) Unless a delayed effective date is specified, revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution are filed.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

SOURCES: Laws, 1987, ch. 486, § 14.04; Laws, 2000, ch. 469, § 27, eff from and after July 1, 2000.

Cross References — Voluntary dissolution of corporation under Mississippi Non-profit Corporation Act, see §§ 79-11-333 through 79-11-345.

RESEARCH REFERENCES

Am Jur. 6A Am. Jur. Legal Forms 2d,
Corporations § 74:2447.

§ 79-4-14.05. Effect of dissolution.

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (1) Collecting its assets;
- (2) Disposing of its properties that will not be distributed in kind to its shareholders;
- (3) Discharging or making provision for discharging its liabilities;
- (4) Distributing its remaining property among its shareholders according to their interests; and
- (5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Prevent transfer of its shares of securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- (3) Subject its directors and officers to standards of conduct different from those prescribed in Article 8;
- (4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation or removal of its directors or officers or both; or change provisions for amending its bylaws;

- (5) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (7) Terminate the authority of the registered agent of the corporation.

SOURCES: Laws, 1987, ch. 486, § 14.05, **eff from and after January 1, 1988.**

Cross References — Applicability of § 79-4-14.05 to corporation which has been administratively dissolved by Secretary of State, see § 79-4-14.21.

Application of § 79-4-14.05 to winding up and liquidation of corporation's business and affairs after judicial dissolution, see § 79-4-14.33.

Effect of dissolution, according to provisions of § 79-4-14.05, on order directing buyout of shareholder petitioning to dissolve corporation whose shares are not listed or regularly traded, see § 79-4-14.34.

Voluntary dissolution of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-333 through 79-11-345.

JUDICIAL DECISIONS

1. In general.

While a corporation had been administratively dissolved and such dissolution occurred prior to a wrongful death action being filed against the corporation, it was still amenable to suit under the authority of Miss. Code Ann. § 79-4-14.05(b)(5). *Schustz v. Buccaneer, Inc.*, 850 So. 2d 209 (Miss. Ct. App. 2003).

A corporate obligor and those who control it may not with impunity dissolve the corporation in a debt avoidance maneuver and cause its assets to be transferred to a

new successor corporation. This is so whether the debt arises in contract, quasi-contract, or tort. Where a corporation unsuccessfully sought to avoid liability on a contract with a former shareholder by dissolving the corporation and transferring assets to a newly formed corporation, the shareholder's rights against the new corporation were limited to the extent that the new corporation acquired assets of the contracting corporation without paying fair value therefor. *Morris v. Macione*, 546 So. 2d 969 (Miss. 1989).

RESEARCH REFERENCES

ALR. Liability of shareholders, directors, and officers where corporate business is continued after its dissolution. 72 A.L.R.4th 419.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2348-2351, 2474 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 451 et seq.

CJS. 19 C.J.S., Corporations §§ 1727-1741.

§ 79-4-14.06. Known claims against dissolved corporation.

(a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice must:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline; or

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

SOURCES: Laws, 1987, ch. 486, § 14.06; Laws, 2001, ch. 435, § 16, eff from and after July 1, 2001.

Cross References — Effective date of dissolution, see § 79-4-14.03.

Barring of claim of claimant, who did not receive written notice under this section, when corporation publishes notice of its dissolution in newspaper, see § 79-4-14.07.

Applicability of § 79-4-14.06 to corporation which has been administratively dissolved by Secretary of State, see § 79-4-14.21.

Application of § 79-4-14.06 to winding up and liquidation of corporation's business and affairs after judicial dissolution see § 79-4-14.33.

Effect of dissolution, according to provisions of § 79-4-14.06, on order directing buyout of shareholder petitioning to dissolve corporation whose shares are not listed or regularly traded, see § 79-4-14.34.

Deposit of assets of dissolved corporation with State Treasurer for safe keeping until creditor, claimant or shareholder furnishes proof of entitlement to such assets, see § 79-4-14.40.

Voluntary dissolution of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-333 through 79-11-345.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

2.-10. [Reserved for future use.]

II. Under Former § 79-3-209.

11. In general.

I. Under Current Law.

1. In general.

A corporate obligor and those who control it may not with impunity dissolve the corporation in a debt avoidance maneuver and cause its assets to be transferred to a new successor corporation. This is so whether the debt arises in contract, quasi-contract, or tort. Where a corporation un-

successfully sought to avoid liability on a contract with a former shareholder by dissolving the corporation and transferring assets to a newly formed corporation, the shareholder's rights against the new corporation were limited to the extent that the new corporation acquired assets of the contracting corporation without paying fair value therefor. *Morris v. Macione*, 546 So. 2d 969 (Miss. 1989).

2.-10. [Reserved for future use.]

II. Under Former § 79-3-209.

11. In general.

A products liability action against a dissolved corporation could be maintained

where the liability of the defendant was incurred at the time the machine at issue was manufactured and placed on the market. *Naugher v. Fox River Tractor Co.*, 446 F. Supp. 1281 (N.D. Miss. 1977).

Judgment rendered against road contractor and his foreign corporate surety held not void because when rendered surety had been dissolved and was in hands of receiver. *Rawlings v. AMOCO*, 173 Miss. 683, 161 So. 851 (1935).

This section [Code 1942, § 5353] applies to foreign corporations doing business in state, as well as to domestic corporations. *Rawlings v. AMOCO*, 173 Miss. 683, 161 So. 851 (1935).

Foreign corporation dissolved in domicile of its origin may be deemed alive in foreign state, so far as to afford remedies to its own citizens against property within its jurisdiction. *Rawlings v. AMOCO*, 173 Miss. 683, 161 So. 851 (1935).

Persons asserting claims against corporation after final decree for corporation's liquidation was entered and liquidator discharged were not required to obtain permission of chancery court to sue corporation, and suit against liquidator was no longer proper. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Claimant who failed to assert tort claim against corporation pursuant to notice given creditors of corporation's dissolution

could, after dissolution distribution to stockholders of assets, and discharge of liquidator, sue corporation for adjudication of merits of claim, preliminary to taking steps against stockholders as distributees of corporation's assets. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Failure of creditor of corporation receiving notice of dissolution thereof to file claim does not result in canceling or barring claim. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Corporation's existence as debtor is continued after dissolution only for purposes of suit against it for adjudication of debt or demand upon its merits, and creditor, upon obtaining judgment against corporation, may pursue stockholders to whom corporation's assets have been distributed. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Express reservation by statute of rights of creditors of corporation after dissolution carries with it necessarily reasonable means for enforcement of rights so preserved. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

Statute making "debts" due from corporation a charge upon its property after dissolution includes tort demands. *Bates v. Mississippi Indus. Gas Co.*, 173 Miss. 361, 161 So. 133 (1935).

RESEARCH REFERENCES

ALR. Availability of and time for bringing action against former director, officer, or stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Liability of shareholders, directors, and officers where corporate business is continued after its dissolution. 72 A.L.R.4th 419.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2419, 2420, 2450-2458.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 482, 494, 495.

CJS. 19 C.J.S., Corporations §§ 1763-1766, 1772, 1780.

§ 79-4-14.07. Unknown claims against dissolved corporation.

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within the lesser of three (3) years after the publication date of the newspaper notice, or any other applicable limitations period established by applicable law:

(1) A claimant who was not given written notice under Section 79-4-14.06;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by Section 79-4-14.06(c) or Section 79-4-14.07(c) may be enforced:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) Except as provided in Section 79-4-14.08(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

SOURCES: Laws, 1987, ch. 486, § 14.07; Laws, 1990, ch. 538, § 6; Laws, 2001, ch. 435, § 17; Laws, 2004, ch. 495, § 11, eff from and after July 1, 2004.

Cross References — Applicability of § 79-4-14.07 to corporation that has been administratively dissolved by Secretary of State, see § 79-4-14.21.

Application of § 79-4-14.07 to winding up and liquidation of corporation's business and affairs after judicial dissolution, see § 79-4-14.33.

Effect of dissolution, according to provisions of § 79-4-14.07, on order directing buyout of shareholder petitioning to dissolve corporation whose shares are not listed or regularly traded, see § 79-4-14.34.

Deposit of assets of dissolved corporation with State Treasurer for safe keeping until creditor, claimant or shareholder furnishes proof of entitlement to such assets, see § 79-4-14.40.

Voluntary dissolution of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-333 through 79-11-345.

RESEARCH REFERENCES

ALR. Availability of and time for bringing action against former director, officer, or stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Liability of shareholders, directors, and officers where corporate business is continued after its dissolution. 72 A.L.R.4th 419.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2421, 2489-2497.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 491 et seq.

CJS. 19 C.J.S., Corporations §§ 1763, 1766, 1772-1780.

§ 79-4-14.08. Dissolved corporations — chancery court proceedings for security payment of claims; notice; guardian ad litem; satisfaction of claim.

(a) A dissolved corporation that has published a notice under Section 79-4-14.07 may file an application with the chancery court of the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under Section 79-4-14.07(c).

(b) Within ten (10) days after the filing of the application, notice of the proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

(c) The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(d) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (a) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

SOURCES: Laws, 2001, ch. 435, § 18, eff from and after July 1, 2001.

Cross References — Voluntary dissolution of corporation under Mississippi Non-profit Corporation Act, see §§ 79-11-333 through 79-11-345.

§ 79-4-14.09. Payment of claims and distribution of assets of dissolved corporations; liability.

(a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under Section 79-4-14.06, 79-4-14.07 or 79-4-14.08 shall not be liable for breach of Section 79-4-14.09(a) with respect to claims against the dissolved corporation that are barred or satisfied under Section 79-4-14.06, 79-4-14.07 or 79-4-14.08.

SOURCES: Laws, 2001, ch. 435, § 19, eff from and after July 1, 2001.

Cross References — Liability for unlawful distribution, see § 79-4-8.33.

Voluntary dissolution of corporation under Mississippi Nonprofit Corporation Act, see §§ 79-11-333 through 79-11-345.

SUBARTICLE B.

ADMINISTRATIVE DISSOLUTION.

SEC.

- 79-4-14.20. Grounds for administrative dissolution.
- 79-4-14.21. Procedure for and effect of administrative dissolution.
- 79-4-14.22. Reinstatement following administrative dissolution.
- 79-4-14.23. Appeal from denial of reinstatement.

§ 79-4-14.20. Grounds for administrative dissolution.

The Secretary of State may commence a proceeding under Section 79-4-14.21 to administratively dissolve a corporation if:

(1) The corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;

(2) The corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(3) The corporation is without registered agent or registered office in this state for sixty (60) days or more;

(4) The corporation does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(5) The corporation's period of duration stated in its articles of incorporation expires.

SOURCES: Laws, 1987, ch. 486, § 14.20, eff from and after January 1, 1988.

Cross References — Procedures for, and effect of, administrative dissolution, see § 79-4-14.21.

Administrative dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-347 through 79-11-353.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-189.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-189.

11. In general.

The owner and operator of an incorpo-

rated sole proprietorship was personally liable, under former § 79-3-285, for corporate debts to a creditor who dealt with the corporation as a sole proprietorship which were incurred while the corporation was suspended from doing business, pursuant to former § 79-3-189, for failing to file an annual report. *Carolina Transformer Co. v. Anderson*, 341 So. 2d 1327 (Miss. 1977).

RESEARCH REFERENCES

ALR. What amounts to "oppressive" conduct under statute authorizing dissolution of corporation at suit of minority stockholders. 56 A.L.R.3d 358.

Dissolution of corporation on ground of intracorporate deadlock or dissension. 83 A.L.R.3d 458.

Availability of and time for bringing action against former director, officer, or stockholder in dissolved corporation for

personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2391 et seq.

CJS. 19 C.J.S., Corporations §§ 1647 et seq.

Law Reviews. 1984 Mississippi Supreme Court Review: Corporate, Contract and Commercial Law. 55 Miss. L. J. 65, March, 1985.

§ 79-4-14.21. Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-14.20 for dissolving a corporation, he shall serve the corporation with written notice of his determination under Section 79-4-5.04, except that such determination may be served by first class mail.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-4-5.04, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under Section 79-4-5.04, except that such certificate may be served by first class mail.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and

liquidate its business and affairs under Section 79-4-14.05 and notify claimants under Sections 79-4-14.06 and 79-4-14.07.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

SOURCES: Laws, 1987, ch. 486, § 14.21; Laws, 1991, ch. 509, § 2, eff from and after July 1, 1991.

Cross References — Authority for Secretary of State to commence proceeding under § 79-4-14.21 to administratively dissolve corporation, and grounds therefor, see § 79-4-14.20.

Rights of corporation administratively dissolved under § 79-4-14.21 to apply for reinstatement, and procedures therefor, see § 79-4-14.22.

Administrative dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-347 through 79-11-353.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations **CJS.** 19 C.J.S., Corporations §§ 1647 et
§§ 2391 et seq. seq.

§ 79-4-14.22. Reinstatement following administrative dissolution.

(a) A corporation administratively dissolved under Section 79-4-14.21 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The applicant must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and

(4) Contain a certificate from the Mississippi State Tax Commission reciting that all taxes owed by the corporation have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation under Section 79-4-5.04.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

SOURCES: Laws, 1987, ch. 486, § 14.22; Laws, 1993, ch. 368, § 13; Laws, 2009, ch. 527, § 1; Laws, 2009, ch. 530, § 3, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 1 of ch. 527, Laws of 2009, effective from and after July 1, 2009 (approved April 13, 2009), amended this section. Section 3 of ch. 530, Laws of 2009, effective from and after July 1, 2009 (approved April 14, 2009), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 527, Laws of 2009, which contains language that specifically provides that it supersedes § 79-4-14.22 as amended by chapter 530, Laws of 2009.

Editor's Note — Effective July 1, 2010, Section 27-3-4 provides that the terms “Mississippi State Tax Commission,” “State Tax Commission,” “Tax Commission” and “commission” appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.”

Amendment Notes — The first 2009 amendment (ch. 527) substituted “at any time” for “within five (5) years” in the first sentence of the introductory language of (a).

The second 2009 amendment (ch. 530) substituted “at any time” for “within five (5) years” in the first sentence of the introductory language of (a).

Cross References — Administrative dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-347 through 79-11-353.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations
§§ 2499 et seq.

CJS. 19 C.J.S., Corporations § 1741.

§ 79-4-14.23. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a corporation’s application for reinstatement following administrative dissolution, he shall serve the corporation under Section 79-4-5.04 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County, Mississippi, or the chancery court of the county where the corporation is domiciled within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State’s certificate of dissolution, the corporation’s application for reinstatement and the Secretary of State’s notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court’s final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 486, § 14.23; Laws, 2009, ch. 527, § 2, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment inserted “or the chancery court of the county where the corporation is domiciled” in (b).

Cross References — Administrative dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-347 through 79-11-353.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2499-2507. **CJS.** 19 C.J.S., Corporations § 1741.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 500, 501.

SUBARTICLE C.

JUDICIAL DISSOLUTION.

SEC.

- 79-4-14.30. Grounds for judicial dissolution.
- 79-4-14.31. Procedure for judicial dissolution.
- 79-4-14.32. Receivership or custodianship.
- 79-4-14.33. Decree of dissolution.
- 79-4-14.34. Election to purchase in lieu of dissolution.

§ 79-4-14.30. Grounds for judicial dissolution.

(a) The chancery court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(i) The corporation obtained its articles of incorporation through fraud;

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent;

(iii) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) The corporate assets are being misapplied or wasted;

(3) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment return unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(5) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Section 79-4-14.30(a)(2) shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares that are: (i) listed on the New York Stock Exchange, the American Stock Exchange, or any exchange owned or operated by the NASDAQ Stock Market, LLC, or listed or quoted on a system owned or operated by the National Association of Securities Dealers, Inc.; or (ii) not so listed or quoted, but are held by at least three hundred (300) shareholders and the shares outstanding have a market value of at least Twenty Million Dollars (\$20,000,000.00) (exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares).

(c) In this section "beneficial shareholder" has the meaning specified in Section 79-4-13.01(2).

SOURCES: Laws, 1987, ch. 486, § 14.30; Laws, 1990, ch. 538, § 7; Laws, 2007, ch. 361, § 17, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment added (b) and (c); designated the previously existing provisions as (a); added (a)(5); and made a minor stylistic change.

Cross References — Right to challenge corporation's power to act in proceeding brought by Attorney General for judicial dissolution, see § 79-4-3.04.

Venue for proceeding for judicial dissolution brought by any party named in this section, see § 79-4-14.31.

Required notice, upon commencement of proceeding under § 79-4-14.30 to dissolve corporation whose shares are not listed or regularly traded, of option to avoid dissolution by elective buyout of petitioner's shares, see § 79-4-14.31.

Entering of decree of judicial dissolution of corporation, see § 79-4-14.33.

Dissolution of corporation the shares of which are not listed on national securities exchange or regularly traded in market maintained by members of national or affiliated securities association, see § 79-4-14.34.

Dissolution of professional corporation by Attorney General, see § 79-10-85.

Judicial dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-355 through 79-11-361.

RESEARCH REFERENCES

ALR. Preferred stockholder's rights, upon liquidation or dissolution, to dividends. 25 A.L.R.2d 788.

Stockholders' rights to patent, copy-right, or trademark owned by corporation on dissolution thereof. 30 A.L.R.2d 938.

What amounts to "oppressive" conduct under statute authorizing dissolution of corporation at suit of minority stockholders. 56 A.L.R.3d 358.

Dissolution of corporation on ground of intracorporate deadlock or dissension. 83 A.L.R.3d 458.

Availability of and time for bringing action against former director, officer, or stockholder in dissolved corporation for

personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Relief other than by dissolution in cases of intracorporate deadlock or dissension. 34 A.L.R.4th 13.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2351, 2360 et seq.

6 Am. Jur. Legal Forms 2d, Corporations § 74:786.

5 Am. Jur. Proof of Facts 2d 645, Oppressive Conduct by Majority Shareholders, Directors, or Those in Control of Corporation.

6 Am. Jur. Proof of Facts 2d 387, Dissension or Deadlock of Corporate Directors or Shareholders.

CJS. 19 C.J.S., Corporations §§ 1641-1645, 1648, 1655, 1694 et seq. **preme Court Review: Corporate, Contract and Commercial Law.** 55 Miss. L. J. 65, March, 1985.
Law Reviews. 1984 Mississippi Su-

§ 79-4-14.31. Procedure for judicial dissolution.

(a) Venue for a proceeding brought by any party named in Section 79-4-14.30 lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten (10) days of the commencement of a proceeding under Section 79-4-14.30(2) to dissolve a corporation that is not a public corporation, the corporation shall send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under Section 79-4-14.34 and accompanied by a copy of Section 79-4-14.34.

SOURCES: Laws, 1987, ch. 486, § 14.31; Laws, 1990, ch. 538, § 8; Laws, 1993, ch. 368, § 12; Laws, 1994, ch. 417, § 3; Laws, 2006, ch. 429, § 13, eff from and after July 1, 2006.

Cross References — Dissolution of professional corporation by Attorney General, see § 79-10-85.

Judicial dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-355 through 79-11-361.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-195.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-195.

11. In general.

The conditions which must be shown in order to entitle a stockholder to have a dissolution of a corporation and a receiver appointed are the insolvency of the corpo-

ration, or that the corporation ceases to be a going concern, or while not solvent the corporation sells its franchises in whole or in part. *Welsh v. Clinton Lumber & Supply Co.*, 232 Miss. 507, 99 So. 2d 660 (1958).

An order for the dissolution of a corporation and the appointment of a receiver was void where the petition for the dissolution of the corporation and the appointment of the receiver did not allege the existence of any emergency justifying the appointment of a receiver without notice, and the president and vice president, who owned the majority of the stock, were not given notice, and no bond was executed, as required by Code 1942, § 1357. *Welsh v.*

Clinton Lumber & Supply Co., 232 Miss. 507, 99 So. 2d 660 (1958).

Chancellor was justified in terminating the receivership and returning the assets to the corporation where the entire proceedings wherein the dissolution of the corporation was ordered and the receiver appointed were void for want of notice to other stockholders, and for failure to post the receiver's bond, without regard to the fact that the president and vice president, who were majority stockholders of the corporation, failed to testify in the case. *Welsh v. Clinton Lumber & Supply Co.*, 232 Miss. 507, 99 So. 2d 660 (1958).

In order for minority stockholders in a domestic corporation to put an end to the corporation by requiring its dissolution, there must be either insolvency or mismanagement which must lead to insol-

veny. *Kiersky v. Hyman Mercantile Co.*, 192 Miss. 195, 198 So. 574 (1940).

A minority of stockholders may have a receiver appointed, in equity, on the ground of maladministration, where the corporation is solvent, for the purpose of taking charge of and winding up the business if necessary. *Brent v. B.E. Brister Sawmill Co.*, 103 Miss. 876, 60 So. 1018, Am. Ann. Cas. 1915B,576 (1913).

A receiver of an insolvent corporation, whether public or private, in possession of its entire property, will be required to pay the wages of laborers who rendered services shortly before his appointment which were necessary to continue the business of the corporation and preserve its property in preference to both ordinary and mortgage creditors. *L'Hote v. Boyet*, 85 Miss. 636, 38 So. 1 (1905).

RESEARCH REFERENCES

ALR. Dissolution of corporation on ground of intracorporate deadlock or dissolution. 83 A.L.R.3d 458.

Am Jur. 19 Am. Jur. 2d, Corporations § 2351.

CJS. 19 C.J.S., Corporations §§ 1694 et seq.

§ 79-4-14.32. Receivership or custodianship.

(a) Unless an election to purchase has been filed under Section 79-4-14.34, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and (ii) may sue and defend in his own name as receiver of the corporation in all courts of this state;

(2) The custodian may exercise all the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

SOURCES: Laws, 1987, ch. 486, § 14.32; Laws, 2007, ch. 361, § 18, eff from and after July 1, 2007.

Amendment Notes — The 2007 amendment, in (a), added “Unless an election to purchase has been filed under Section 79-4-14.34” to the beginning of the first sentence and deleted “exclusive” preceding “jurisdiction” in the last sentence; and in (e), substituted “expenses paid or reimbursed to the receiver or custodian from the assets” for “expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets.”

Cross References — Dissolution of professional corporation by Attorney General, see § 79-10-85.

Judicial dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-355 through 79-11-361.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-193.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-193.

11. In general.

In an action involving a controversy among present and former members of a medical partnership which partnership leased its building from a corporation organized by the partners, the court improperly ordered that the corporation be liquidated, where the alleged conduct by the directors of the corporation consisting of their failing to reelect two directors as directors of the corporation after they

withdrew from the medical partnership resulting in these two directors' deferred compensation of \$100 per month being terminated was not “oppressive” conduct within the meaning of § 79-3-193. *Kisner v. Coffey*, 418 So. 2d 58 (Miss. 1982).

In an action by a minority shareholder to compel dissolution of a corporation on grounds of oppressive conduct that arose after the minority shareholder, who had an agreement with the former owners and majority shareholders to manage the corporation until its indebtedness was retired, was terminated by the new owners of the corporation prior to retirement of the debts, the chancery court erred in ordering dissolution, where the contract provided for the majority shareholders to buy the plaintiff's stock at book value, and where plaintiff's management of the corporation was inadequate; the statute does not sanction dissolution where the complaining party's reasonable expectations

have been thwarted, but not grossly so. *Capitol Toyota, Inc. v. Gervin*, 381 So. 2d 1038 (Miss. 1980).

An order for the dissolution of a corporation and the appointment of a receiver was void where the petition for the dissolution of the corporation and the appointment of the receiver did not allege the existence of any emergency justifying the appointment of a receiver without notice, and the president and vice-president, who owned the majority of the stock, were not given notice, and no bond was executed, as required by Code 1942, § 1357. *Welsh v. Clinton Lumber & Supply Co.*, 232 Miss. 507, 99 So. 2d 660 (1958).

Chancellor was justified in terminating the receivership and returning the assets to the corporation where the entire proceedings wherein the dissolution of the corporation was ordered and the receiver appointed were void for want of notice to other stockholders, and for failure to post

the receiver's bond, without regard to the fact that the president and vice president, who were majority stockholders of the corporation, failed to testify in the case. *Welsh v. Clinton Lumber & Supply Co.*, 232 Miss. 507, 99 So. 2d 660 (1958).

The conditions which must be shown in order to entitle a stockholder to have a dissolution of a corporation and a receiver appointed are the insolvency of the corporation, or that the corporation ceases to be a going concern, or while not solvent the corporation sells its franchises in whole or in part. *Welsh v. Clinton Lumber & Supply Co.*, 232 Miss. 507, 99 So. 2d 660 (1958).

In order for minority stockholders in a domestic corporation to put an end to the corporation by requiring its dissolution, there must be either insolvency or mismanagement which must lead to insolvency. *Kiersky v. Hyman Mercantile Co.*, 192 Miss. 195, 198 So. 574 (1940).

RESEARCH REFERENCES

ALR. Dissolution of corporation on ground of intracorporate deadlock or dissolution. 83 A.L.R.3d 458.

Am Jur. 65 Am. Jur. 2d, Receivers §§ 36 et seq.

CJS. 75 C.J.S., Receivers §§ 71 et seq.

§ 79-4-14.33. Decree of dissolution.

(a) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 79-4-14.30 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with Section 79-4-14.05 and the notification of claimants in accordance with Sections 79-4-14.06 and 79-4-14.07.

SOURCES: Laws, 1987, ch. 486, § 14.33, eff from and after January 1, 1988.

Cross References — Dissolution of professional corporation by Attorney General, see § 79-10-85.

Judicial dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-355 through 79-11-361.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations § 2471. **CJS.** 19 C.J.S., Corporations §§ 1704, 1716, 1725.

§ 79-4-14.34. Election to purchase in lieu of dissolution.

(a) In a proceeding under Section 79-4-14.30(a)(2) to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety (90) days after the filing of the petition under Section 79-4-14.30(a)(2) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten (10) days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty (30) days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under Section 79-4-14.30(a)(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale or other disposition.

(c) If, within sixty (60) days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c), the court, upon application of any party, shall stay the Section 79-4-14.30(a)(2) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under Section 79-4-14.30(a)(2) was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court

deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under Section 79-4-14.30(a)(2)(ii) or (iv), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him.

(f) Upon entry of an order under subsection (c) or (e), the court shall dismiss the petition to dissolve the corporation under Section 79-4-14.30, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e) shall be made within ten (10) days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to Sections 79-4-14.02 and 79-4-14.03, which articles must then be adopted and filed within fifty (50) days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of Sections 79-4-14.05 through 79-4-14.07 and the order entered pursuant to subsection (e) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e), other than an award of fees and expenses pursuant to subsection (e), is subject to the provisions of Section 79-4-6.40.

(i) Nothing contained in this section shall diminish the inherent equity powers of the court to fashion alternative remedies to judicial dissolution.

SOURCES: Laws, 1993, ch. 368, § 11; Laws, 2006, ch. 429, § 14; Laws, 2007, ch. 361, § 19, *eff from and after July 1, 2007*.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the section was corrected by substituting "Section 79-4-14.30(a)(2)" for "Section 79-4-14.30(2)" everywhere it appears.

Amendment Notes — The 2007 amendment deleted “that is not a public corporation” following “dissolve a corporation” in the first sentence of (a).

Cross References — Required notice, upon commencement of proceeding to dissolve corporation whose shares are not listed or regularly traded, of option to avoid dissolution by elective buyout of petitioner’s shares under § 79-4-14.34, see § 79-4-14.31.

Judicial dissolution under Mississippi Nonprofit Corporation Act, see §§ 79-11-355 through 79-11-361.

JUDICIAL DECISIONS

1. In general.

In a proceeding relating to the dissolution of a closely held corporation, the court properly awarded accounting and legal fees to be recovered from the assets of the

corporation, rather than from an improperly acting shareholder/officer of the corporation. *Covington v. Covington*, 780 So. 2d 665 (Miss. Ct. App. 2001).

RESEARCH REFERENCES

ALR. Meaning of “book value” of corporate stock. 51 A.L.R.2d 606.

Dissolving or winding up affairs of corporation domiciled in another state. 19 A.L.R.3d 1279.

Valuation of corporate stock under “buy-out” or “first option” agreement giving option to or requiring corporation or other stockholders to purchase stock of deceased or withdrawing stockholders. 54 A.L.R.3d 790.

What constitutes waiver of stockholder’s or corporation’s right to enforce first-option stock purchase agreement. 55 A.L.R.3d 723.

What amounts to “oppressive” conduct under statute authorizing dissolution of

corporation at suit of minority stockholders. 56 A.L.R.3d 358.

Dissolution of corporation on ground of intracorporate deadlock or dissension. 83 A.L.R.3d 458.

Availability of and time for bringing action against former director, officer, or stockholder in dissolved corporation for personal injuries incurred after final dissolution. 20 A.L.R.4th 414.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2348 et seq.

3 Am. Jur. Proof of Facts 2d 379, Waiver of Right to Enforce “First Option” Stock Purchase Requirement.

CJS. 19 C.J.S., Corporations §§ 914-916 et seq.

SUBARTICLE D.

MISCELLANEOUS.

SEC.

79-4-14.40. Deposit with state treasurer.

§ 79-4-14.40. Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the State Treasurer for safekeeping. When the creditor, claimant or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the State Treasurer shall pay him or his representative that amount.

SOURCES: Laws, 1987, ch. 486, § 14.40, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations § 2421. 6 Am. Jur. Legal Forms 2d, Corporations § 74:788.
7A Am. Jur. Pl & Pr Forms, Corporations, Forms 499, 504.

ARTICLE 15.

FOREIGN CORPORATIONS.

Subarticle A. Certificate of Authority.....79-4-15.01
Subarticle B. Withdrawal.....79-4-15.20
Subarticle C. Revocation of Certificate of Authority.....79-4-15.30

SUBARTICLE A.

CERTIFICATE OF AUTHORITY.

SEC.

79-4-15.01. Authority to transact business required.
79-4-15.02. Consequences of transacting business without authority.
79-4-15.03. Application for certificate of authority.
79-4-15.04. Amended certificate of authority.
79-4-15.05. Effect of certificate of authority.
79-4-15.06. Corporate name of foreign corporation.
79-4-15.07. Registered office and registered agent of foreign corporation.
79-4-15.08. Change of registered officer or registered agent of foreign corporation.
79-4-15.09. Resignation of registered agent of foreign corporation.
79-4-15.10. Service of foreign corporation.

§ 79-4-15.01. Authority to transact business required.

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

- (1) Maintaining, defending or settling any proceeding;
- (2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(9) Owning, without more, real or personal property;

(10) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

(d) A foreign corporation which is a partner or member of any general partnership, limited partnership (other than a limited partner), joint venture, syndicate, pool or other association of any kind, whether or not such foreign corporation shares with or delegates to others control of such entity, which entity is transacting business in this state, is hereby declared to be transacting business in this state.

SOURCES: Laws, 1987, ch. 486, § 15.01; Laws, 1990, ch. 538, § 9, eff from and after July 1, 1990.

Cross References — Consequences of transacting business without authority, see § 79-4-15.02.

Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

Establishing or acquiring out-of-state trust institution, conditions for approval, see § 81-27-2.105.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
- 2.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-1-19.
12. Under former § 79-1-23.
13. Under former § 79-3-211.
14. Under former § 79-3-289.

I. Under Current Law.

1. In general.

If a foreign corporation is not transacting business in Mississippi, a certificate of authority is not required in order to maintain an action in Mississippi, as demonstrated by § 79-4-15.02(c) which states that a court may stay a proceeding commenced by a foreign corporation until it

determines whether the corporation requires a certificate of authority; since the court is granted some amount of discretion, it is apparent that not all foreign corporations require a certificate to maintain an action. *Mississippi Ins. Guar. Ass'n v. Harkins & Co.*, 652 So. 2d 732 (Miss. 1995).

A foreign corporation was not transacting business in Mississippi, and therefore did not need a certificate of authority in order to maintain an action in Mississippi where the only business contact the corporation had with Mississippi was the actual commencement of the suit, since § 79-4-15.01(b)(1) states that simply maintaining, defending, or settling a proceeding does not constitute "transacting business." *Mississippi Ins. Guar. Ass'n v. Harkins & Co.*, 652 So. 2d 732 (Miss. 1995).

2.-10. [Reserved for future use.]**II. Under Former Law.****11. Under former § 79-1-19.**

A foreign corporation domesticated in Mississippi under statute remains a resident of state of original incorporation for all jurisdictional purposes, state and federal, and is subject to attachment in Mississippi courts as a "nonresident," since, for purpose of removing to federal court an action brought in state of domestication, a domesticated foreign corporation is a nonresident. *Southern Motor Express Co. v. Magee Truck Lines*, 181 Miss. 223, 177 So. 653, 114 A.L.R. 1377 (1937).

Shares of stock in Louisiana corporation, doing business and domesticated in Mississippi, have their situs for devolution purposes in this state. *Ewing v. Warren*, 144 Miss. 233, 109 So. 601 (1926).

12. Under former § 79-1-23.

In a personal injury action against a domesticated foreign corporation, the trial court's exercise of jurisdiction as an attachment in chancery on the grounds of nonresidency did not violate the corporation's right to equal protection of the laws, even though it claimed to be a domestic corporation for all intents and purposes, where the state of incorporation retained, *inter alia*, supervisory power and the final authority to dissolve the corporation. *Louisville & N.R. Co. v. Hasty*, 360 So. 2d 925 (Miss. 1978), cert. denied, 439 U.S. 1003, 99 S. Ct. 614, 58 L. Ed. 2d 679 (1978).

A foreign corporation domesticated in Mississippi under statute remains a resident of state of original incorporation for all jurisdictional purposes, state and federal, and is subject to attachment in Mississippi courts as a "nonresident," since, for the purpose of removing to federal court an action brought in state of domestication, a domesticated foreign corporation is a nonresident. *Southern Motor Express Co. v. Magee Truck Lines*, 181 Miss. 223, 177 So. 653, 114 A.L.R. 1377 (1937).

13. Under former § 79-3-211.

Foreign corporation seeking to maintain action for breach of contract was not barred under Miss Code § 79-3-247 [re-

pealed] from bringing action for failure to have certificate of authority to do business in state where foreign corporation maintained no office or bank account in state and had no employees in state and where purpose of contract was for foreign corporation to manage hotel, thus bringing business within reach of Commerce Clause and within exception to definition of "transacting business" under § 79-3-211 [repealed]. *Madden Mgt., Inc. v. First Equities Corp.*, 666 F. Supp. 96 (N.D. Miss. 1987).

If foreign corporation is qualified to do business in State of Mississippi, even though it may not be doing any business, its agent for process may be served and courts have personal jurisdiction over that corporation; actually doing business in state has nothing to do with personal jurisdiction where foreign corporation has qualified to do business in state; corporation qualifying to do business in state, under appropriate statutes, becomes like individual as far as suit is concerned. *Read v. Sonat Offshore Drilling, Inc.*, 515 So. 2d 1229 (Miss. 1987).

In a diversity action by a Florida construction company in federal district court for Mississippi, seeking to recover a construction contract debt from the surety, a Mississippi bank, the trial court committed reversible error when it granted the bank's motion for dismissal on the grounds that the foreign company had engaged in intrastate commerce without qualifying to do so as required by Mississippi law, and thus, was precluded from maintaining an action in Mississippi state or federal court, where contract substantially related to interstate activities, where, under the National Bank Act, the bank was required to be sued where it was located, and where it would have been an impermissible burden on interstate commerce to permit Mississippi courtroom doors to remain closed to such foreign company on events and contracts substantially related to interstate activities. *Diversacon Indus., Inc. v. National Bank of Commerce*, 629 F.2d 1030 (5th Cir. 1980).

A Georgia corporation was not barred from seeking relief in the Mississippi courts for an alleged breach of a restric-

tive covenant by one of its former employees, even though the claim arose out of the transaction of business in the state and even though plaintiff corporation had not first obtained a certificate of authority from the Secretary of State, where the record supported the trial court's findings that plaintiff was engaged in interstate commerce and was thus exempted by subsections (d) and (e) of this section from the certificate requirements. *Cheatham v. Kem Mfg. Corp.*, 372 So. 2d 1085 (Miss. 1979).

Payment of the contractor's privilege tax by a foreign corporation did not relieve it of the requirement that it obtain a certificate of authority to do business from the secretary of state and, absent such certificate, the contractor was not entitled to sue in state court to enforce a construction lien. *Town & Country Plumbing Co. v. Delta Real Estate Dev., Inc.*, 357 So. 2d 126 (Miss. 1978).

An Arkansas corporation was doing business within the state where, of its chain of franchised retail stores, several were in Mississippi, and, with respect to a particular Mississippi store from which it sought recovery of franchise fees and other charges, evidence showed that the corporation had a contract right to control virtually the entire operation of the store and that it was in fact significantly involved in that operation. *Barbee v. United Dollar Stores, Inc.*, 337 So. 2d 1277 (Miss. 1976).

An Ohio corporation that had acted as purchaser and lessor of frozen drink machines, buying them from a Georgia corporation and leasing them to individuals in Mississippi who had agreed to lease them in an arrangement made through the Georgia corporation, was not "transacting" business within Mississippi within the meaning of § 79-3-247 [repealed] and could bring an action in the Mississippi district court to recover amounts due on the lease from the lessees. *XYOQUIP, Inc. v. Mims*, 413 F. Supp. 962 (N.D. Miss. 1976).

In a suit filed by a foreign corporation having no certificate of authority to do business in this state, where the record showed that the only business that the plaintiff had transacted in this state was

entering into the lease contract with the defendant which was the subject of the suit, the transaction sued upon fell within the exception set up in Code 1972, § 79-3-211(d) [repealed], and the plaintiff was therefore not barred from bringing suit by Code 1972, § 79-3-247 [repealed]. *Mid-Continent Refrigerator Co. v. Starks*, 298 So. 2d 714 (Miss. 1974).

Diversity action brought by nonresident plaintiffs to recover a brokerage fee allegedly owed by the defendant for two loan commitments was not barred by Code 1972 § 79-3-247 [repealed] where the transactions involved fell within the exception found in Code 1972 § 79-3-211(e) [repealed]. *Ivor B. Clark Co. of Texas, Inc. v. Southern Bus. & Indus. Dev. Co.*, 399 F. Supp. 824 (S.D. Miss. 1974).

A foreign corporation not authorized by statute to do business in Mississippi cannot resort either to the state or to the federal court sitting within the state to enforce its rights unless they arose from and were exempted as a transaction in interstate commerce. *Cone Mills Corp. v. Hurdle*, 369 F. Supp. 426 (N.D. Miss. 1974).

Code 1942, § 5309-239, prohibiting foreign corporations lacking a certificate of authority to maintain any action, suit or proceeding in the state, is a punitive statute designed to penalize those foreign corporations doing business in the State of Mississippi without qualifying as required by Code 1942, § 5309-221. *Alabama Live Poultry, Inc. v. Ervin*, 246 So. 2d 915 (Miss. 1971).

A foreign corporation's negotiation and purchase of common stock in one or more subsidiary companies within Mississippi does not render it doing business within the purview of the qualification statutes, and the fact that acquisition of stock in other companies was an avowed purpose of the foreign corporation's charter has no effect upon the operation of this rule. *Mid-Continent Tel. Corp. v. Home Tel. Co.*, 307 F. Supp. 1014 (N.D. Miss. 1969).

The purchase or ownership of stock, even of a controlling interest, in a domestic corporation by a foreign corporation does not constitute doing business by the foreign corporation sufficient to subject it to service of process in the state of the

subsidiary's operation. *Mid-Continent Tel. Corp. v. Home Tel. Co.*, 307 F. Supp. 1014 (N.D. Miss. 1969).

That a foreign corporation entered into a service agreement with its Mississippi subsidiary whereby it furnishes to the subsidiary, upon its request, services in various areas requiring technical training and expertise and also sold to its subsidiary equipment and supplies, lends its money, and other financial assistance, local activities at least partly performed in Mississippi, these facts are insufficient to support the conclusion that the foreign corporation is "doing business" in the State of Mississippi. *Mid-Continent Tel. Corp. v. Home Tel. Co.*, 307 F. Supp. 1014 (N.D. Miss. 1969).

A greater degree of business activity is required to bar a foreign corporation from Mississippi courts than is required to subject the same foreign corporation to local service of process under the state's long arm statute. *Mid-Continent Tel. Corp. v. Home Tel. Co.*, 307 F. Supp. 1014 (N.D. Miss. 1969).

A foreign corporation is "doing business" within the state where it performs acts (not excluded by the statute itself) that are within the functions of its corporate powers and the business so performed is substantial in scope, and the substantiality and scope of local activity are equated with some substantial part of its ordinary or customary business, usually continuous in the sense that it may be distinguished from merely casual, sporadic, or occasional transactions and isolated acts. *Mid-Continent Tel. Corp. v. Home Tel. Co.*, 307 F. Supp. 1014 (N.D. Miss. 1969).

A corporation is doing business for purposes of requiring it to qualify to have access to the courts of Mississippi when the corporation enters the state and carries on a substantial part of its business there on a regular basis, and the question of whether a corporation is so doing business in the state is one of the facts to be determined by the circumstances of each particular case, and the corporation's activities must be judged as a whole. *Humboldt Foods, Inc. v. Massey*, 297 F. Supp. 236 (N.D. Miss. 1968).

A Tennessee food processing corporation, which entered into a contract with

five Mississippi planters under which the latter agreed to cultivate 1000 acres of green beans and the processor obligated itself to harvest and transport the beans, was not engaged in doing business in Mississippi, and was not prohibited from maintaining an action in federal court in that state, although not qualified to do business there. *Humboldt Foods, Inc. v. Massey*, 297 F. Supp. 236 (N.D. Miss. 1968).

A corporation is not doing business in Mississippi merely because it has employees or agents in the state to solicit orders to be transmitted to the principal, or to perform acts incidental to interstate commerce. *Humboldt Foods, Inc. v. Massey*, 297 F. Supp. 236 (N.D. Miss. 1968).

The penalty imposed against a foreign corporation doing business in Mississippi without having first qualified is that it shall not be permitted to avail itself of the state courts to enforce a cause of action accruing to it prior to the time it qualified to do business; but the contracts and other acts of a foreign corporation entered into or performed prior to its qualification are not rendered invalid. *Wood v. Gulf States Capital Corp.*, 217 So. 2d 257 (Miss. 1968).

A foreign credit corporation which has an agent in Mississippi for the purpose of calling upon prospective sellers of title retention notes to solicit and induce them to submit the collateral notes taken from their customers to the office of the credit corporation in Memphis, Tennessee, furnished an automobile to its agent for use in calling on manufacturers and dealers in Mississippi, and offered its services to dealers to collect delinquent money due on notes, or to recover the possession of property described in the notes, was not engaged in doing business in Mississippi within the purview of this section [Code 1942, § 5309-221]. *Ross Constr. Co. v. U.M. & M. Credit Corp.*, 214 So. 2d 822 (Miss. 1968).

A foreign corporation doing business in Mississippi without having qualified as required by statute cannot use the courts of this state to enforce any cause of action that accrued as the result of doing such business, and in order to avail itself of the state courts to enforce a cause of action, a foreign corporation doing business in the

state must have qualified to do business when the cause of action accrued. *Parker v. Lin-Co Producing Co.*, 197 So. 2d 228 (Miss. 1967).

The statutory prohibition against bringing or maintaining actions or suits does not prevent a defendant from interposing defenses when sued nor preclude the asserting or recovering of a counterclaim. *Smith v. Kincade*, 232 F.2d 306 (5th Cir. 1956).

Where a foreign corporation shipped its products f. o. b. from point outside the state to local dealers, who agreed to pay therefor and where the corporation also employed resident contract men to procure and recommend local dealers and investigate sureties on their performance bonds, the foreign corporation was not doing business in the state to such extent that the failure to qualify under this section [Code 1942, § 5319] would bar suits in courts of the state. *J.R. Watkins Co. v. Flynt*, 220 Miss. 871, 72 So. 2d 195 (1954).

A foreign trading corporation having no office or place of business in this state, by employing a soliciting agent to obtain orders and send them to the home office, where they are filled by direct shipments to the purchasers, is not doing business in this state within the meaning of this section [Code 1942, § 5319]. *Savell v. Schultz, Baujan & Co.*, 213 Miss. 427, 57 So. 2d 151 (1952).

A foreign corporation which has failed to file a written power of attorney designating an agent on whom service of process may be had, in compliance with this section [Code 1942, § 5319], cannot maintain in a federal court an action, commenced on ground of diversity of citizenship, for a broker's commission alleged to be due for the sale of real estate in the state, since this section [Code 1942, § 5319] also provides that a foreign corporation failing to comply with the above requirements shall not be permitted to bring or maintain any action or suit in any of the courts of the state. *Woods v. Interstate Realty Co.*, 337 U.S. 535, 69 S. Ct. 1235, 93 L. Ed. 1524 (1949).

The Mississippi statutes deny to the noncomplying corporations permission to bring a suit in the state courts; but they do not prevent such a corporation from being

sued upon its contracts in the state courts. *Interstate Realty Co. v. Woods*, 168 F.2d 701 (5th Cir. 1948), on reh'g, 170 F.2d 694 (1948), rev'd, 337 U.S. 535, 69 S. Ct. 1235, 93 L. Ed. 1524 (1949).

A Tennessee corporation, which, through its agents, had contracted to sell real estate in Mississippi and in connection with sales had sent its agents into the state to meet prospective buyers and to show the properties to be sold, and which had admitted earnings from the sale of real estate in Mississippi over a period of years, was doing business in Mississippi within the meaning of this statute. *Interstate Realty Co. v. Woods*, 168 F.2d 701 (5th Cir. 1948), on reh'g, 170 F.2d 694 (1948), rev'd, 337 U.S. 535, 69 S. Ct. 1235, 93 L. Ed. 1524 (1949).

In action on an account by a foreign corporation not authorized to do business in the state, where defendant's plea and plaintiff's replication raised issue whether plaintiff was doing business in the state, it was error to sustain demurrer to replication grounded on exhibits attached to the plea. *W.T. Rawleigh Co. v. Lowry*, 199 Miss. 107, 23 So. 2d 540 (1945).

Foreign corporation, engaged in doing highway construction as its chief corporate function, was doing business in the state in the performance of a contract with the state highway commission for the construction of a link of state highway, within the purview of statutes requiring it to file a copy of its charter and designate an agent for the service of process. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

Performance of contract between foreign highway construction corporation and state highway commission for construction of a link of highway within state was not an isolated transaction within the rule that an isolated dealing within the state by a foreign corporation is not doing business in the state so as to require filing of copy of charter and designation of agent for service of process. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

The usual test of whether a foreign corporation is doing business within the meaning of the statutes is whether or not

it is doing such acts as are within the function of its corporate powers, and where the business so performed is substantial in scope such corporation is held to be doing business. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

Permitting highway commission, in suit against it by foreign corporation to recover for damages for delay and additional compensation for extra work under contract with commission for construction of highway in state, to set up defense that corporation failed to qualify as a foreign corporation doing business in the state, after suit had been pending for three years and complainant had taken testimony for 20 days and rested, was not error, in absence of a showing that commission had notice of the noncompliance with the statutes prior to the taking of the evidence. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

Foreign corporation doing business in state in performance of contract with highway commission for construction of highway could not recover damages for delay occasioned by commission nor additional compensation for extra work performed under such contract during time it failed to comply with provision requiring filing of a copy of its charter and designation of an agent for service of process. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

To constitute a foreign corporation doing business in a particular jurisdiction, the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state where the service of process is attempted. *Lee v. Memphis Pub. Co.*, 195 Miss. 264, 14 So. 2d 351, 152 A.L.R. 1428 (1943).

A foreign finance company was subject to the privilege tax imposed by Laws 1940, ch. 110 on the business of acquiring notes and other securities whereby title is retained until payment of the purchase price of tangible personal property sold on installment payment contracts and the like, notwithstanding that such company

did not file its corporate charter nor qualify to do business within the meaning of this section [Code 1942, § 5319]. *Stone v. General Elec. Contracts Corp.*, 193 Miss. 317, 7 So. 2d 811 (1942).

Where the sale of phonograph instruments to Mississippi residents by an Illinois corporation, which had no resident agent and had not filed a copy of its charter, was made through a Texas distributor, and was interstate in character, the fact that the distributor, who was compensated by a sales commission, had some sort of an understanding with the purchasers that the instrument would be kept in repair by the distributor, and the distributor did from time to time render this service, did not operate to take away the interstate character of the sale so as to preclude the corporation from foreclosing a chattel mortgage on the instrument. *Smith v. J.P. Seeburg Corp.*, 192 Miss. 563, 6 So. 2d 591 (1942).

A foreign corporation sending agents into the state to solicit the purchase of reserve title purchase money contracts, and purchasing such contracts at its office outside of the state, was not doing business in the state within the meaning of the statute. *Yellow Mfg. Acceptance Corp. v. AMOCO*, 191 Miss. 757, 2 So. 2d 834 (1941).

A foreign corporation was not doing business in Mississippi within the meaning of the statute, where it appeared that it was engaged in the business of procuring loans, its local agent sending the applications to the corporation's home office for examination, and acceptance or rejection, and, if accepted, the transaction in connection with the loan was conducted through the home office, and the corporation required the borrower to pay its commission for handling the loan at the home office, or to execute notes payable to it in the city in which its home office was located. The fact that local correspondents, who received and transmitted applications for loans to a foreign loan corporation, were or were not agents of the corporation, rather than of the borrower, was immaterial in determining that the corporation was not doing business within the state, and so was not subject to the requirement as to filing a copy of its char-

ter and appointing an agent to receive service of process. *Morrison v. Guaranty Mtg. & Trust Co.*, 191 Miss. 207, 199 So. 110 (1940).

Under statute (Laws 1934, Ch. 121), imposing franchise tax on corporations "doing business" in the state, which was defined to include each and every act, power or privilege exercised or enjoyed in the state as an incident to or by virtue of the powers and privileges acquired by the nature of the organization, a foreign corporation is "doing business" in the state and is subject to tax as soon as it gets ready to be active by having property there and enjoying the protection of the state for it, and qualifies formally by filing its charter and naming its agent for the service of process. *Stone v. Interstate Natural Gas Co.*, 103 F.2d 544 (5th Cir. 1939), *aff'd*, 308 U.S. 522, 60 S. Ct. 292, 84 L. Ed. 442 (1939), *reh'g denied*, 308 U.S. 639, 60 S. Ct. 381, 84 L. Ed. 530 (1940).

A foreign corporation engaged in the business of discounting for cash for dealers, installment sales contracts for the unpaid balances on electric refrigerators and other electrical equipment, was not doing business within the state within the purview of this section [Code 1942, § 5319], so as to deny it the right to bring suit in the state for failure to file its charter and appoint a process agent, where the assignment contract between such corporation and the dealer was executed outside the state, payments thereon were to be made at the corporation's place of business outside the state, and the title was vested in such corporation until payment was so made, notwithstanding that the corporation sent its agent into the state after the execution of the assignment contract to learn how its business was being conducted. *Refrigeration Dist. Corp. v. Turley*, 189 Miss. 880, 198 So. 731 (1940).

A foreign corporation, executing a contract in Minnesota for the sale of goods at wholesale, to be sold by the other party thereto in Mississippi, which contract required the purchaser to report his sale to the corporation, to designate his sales territory, and to remit a percentage of the proceeds of such sale, and permitted him to return unsold goods, was not doing

business in Mississippi so as to require it to file a copy of its charter with the secretary of state and to appoint such officer as its process agent, and so as to preclude its resort to the court for failure to comply with such requirement, such contract being a contract of sale and not a contract of agency. *Watson v. J.R. Watkins Co.*, 188 Miss. 435, 193 So. 913 (1940).

A foreign corporation, engaged in the business of buying trade acceptances, conditional contracts and other financial paper from dealers and others taking such contracts, but maintaining no office in the state and completing the purchase of such commercial paper at its offices in another state, was not "doing business" within the state so as to preclude its resort to the courts of the state for failure to file the appointment of an agent within the state for the service of process, notwithstanding that it sometimes sent its agents into the state to solicit a purchase of such contracts and commercial paper; and, accordingly, it was error for the court below to grant a peremptory instruction for the defendant and to enter judgment in accordance therewith in a replevin suit wherein a foreign corporation sought recovery of possession of a refrigerator upon default in payment of instalments of a reserve title contract which it has purchased and accepted at its office in Memphis, Tennessee. *C.I.T. Corp. v. Stuart*, 185 Miss. 140, 187 So. 204 (1939).

One test of whether foreign corporation is "doing business" within state within statute barring suit by foreign corporation doing business in state which does not file power of attorney to receive service is whether it is doing such acts as are within the function of its corporate powers. *Marx & Bensdorf v. First Joint Stock Land Bank*, 178 Miss. 345, 173 So. 297 (1937).

Foreign corporation which, through agent, who was nonresident, maintained headquarters at hotel within state large part of agent's time, advertised for realty brokerage business and realized \$19,102.95 in commissions in three years for selling thirty-three tracts of land held "doing business" within state within statute barring suit by foreign corporation doing business in state which does not file power of attorney to receive service. *Marx*

& Bensdorf v. First Joint Stock Land Bank, 178 Miss. 345, 173 So. 297 (1937).

Corporation incorporated under laws of foreign country purchasing commercial paper secured by trust deeds in state and collecting notes and foreclosing trust deeds by agent in state who leased property pending foreclosures to realize on mortgages held not "doing business in state" within statute requiring foreign corporation doing business in state to file charter with secretary of state and appoint agent for service of process. *North Am. Mtg. Co. v. Hudson*, 176 Miss. 266, 168 So. 79 (1936).

Foreign corporation doing business within state, not having complied with regulatory statute, could not bring action in state on notes due it. *Wiley Elec. Co. v. Electric Storage Battery Co.*, 167 Miss. 842, 147 So. 773 (1933).

Louisiana corporation which loaned money pursuant to negotiations through office in Louisiana, though loans were secured by Mississippi realty, held not doing business in Mississippi so as to preclude foreclosure of trust deed without compliance with statute. *Dodds v. Pyramid Sec. Co.*, 165 Miss. 269, 147 So. 328 (1933).

14. Under former § 79-3-289.

In a diversity action by a Florida construction company in federal district court

for Mississippi, seeking to recover a construction contract debt from the surety, a Mississippi bank, the trial court committed reversible error when it granted the bank's motion for dismissal on the grounds that the foreign company had engaged in intrastate commerce without qualifying to do so as required by Mississippi law, and thus, was precluded from maintaining an action in Mississippi state or federal Court, where contract substantially related to interstate activities, where, under the National Bank Act, the bank was required to be sued where it was located, and where it would have been an impermissible burden on interstate commerce to permit Mississippi courtroom doors to remain closed to such foreign company on events and contracts substantially related to interstate activities. *Diversacon Indus., Inc. v. National Bank of Commerce*, 629 F.2d 1030 (5th Cir. 1980).

A foreign corporation not authorized by statute to do business in Mississippi cannot resort either to the state or to the federal court sitting within the state to enforce its rights unless they arose from and were exempted as a transaction in interstate commerce. *Cone Mills Corp. v. Hurdle*, 369 F. Supp. 426 (N.D. Miss. 1974).

ATTORNEY GENERAL OPINIONS

In practice, obtaining a Certificate of Authority from the Secretary of State qualifies the foreign corporation to do business in the state. *Adams*, Nov. 17, 2003, A.G. Op. 03-0596.

A School District should not necessarily assume that the foreign corporation is

authorized to do business in Mississippi. The Mississippi Secretary of State can confirm whether or not a foreign corporation or contractor has been issued a Certificate of Authority. *Adams*, Nov. 17, 2003, A.G. Op. 03-0596.

RESEARCH REFERENCES

ALR. Statutory requirements respecting issuance of corporate stock as applicable to foreign corporations. 8 A.L.R.2d 1185.

Foreign corporation's purchase within state of goods to be shipped into other state or country as doing business within

state for purpose of jurisdiction or service of process. 12 A.L.R.2d 1439.

Ownership or control by foreign corporation of stock of other corporation as constituting doing business within state. 18 A.L.R.2d 187.

Power of state to subject foreign corpo-

ration to jurisdiction of its courts on sole ground that corporation committed tort within state. 25 A.L.R.2d 1202.

What constitutes doing business within state by foreign magazine, newspaper, or other publishing corporation, for purposes other than taxation. 38 A.L.R.2d 747.

Leasing of real estate by foreign corporation, as lessor or lessee, as doing business within state within statutes prescribing conditions of right to do business. 59 A.L.R.2d 1131.

Holding directors', officers', or stockholders', or sales meetings or conventions in a state by foreign corporation as doing business within the state. 84 A.L.R.2d 412.

Construction and application of state statutes and rules of court predicated in personam jurisdiction over nonresidents or foreign corporations on making or performing a contract within the state. 23 A.L.R.3d 551.

Construction and application as to isolated acts or transactions, of state statutes or rules of court predicated in personam jurisdiction over nonresidents or foreign corporations upon the doing of an act or upon doing or transacting business or "any" business, within a state. 27 A.L.R.3d 397.

Foreign corporation's leasing of personal property as doing business within statutes prescribing conditions of right to business. 50 A.L.R.3d 1020.

Construction work by foreign corporation as doing business for purposes of

statute requiring foreign corporation to qualify as condition of access to local courts. 90 A.L.R.3d 937.

State regulation of land ownership by alien corporation. 21 A.L.R.4th 1329.

Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 27 A.L.R.4th 387.

What constitutes doing business within state for purposes of state "closed door" statute barring unqualified or unregistered foreign corporation from local courts — modern cases. 88 A.L.R.4th 466.

Application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute as affected by compliance after commencement of action. 23 A.L.R.5th 744.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 14-16, 170 et seq.

2 Am. Jur. Trials 409, Locating Public Records.

3 Am. Jur. Trials 681, Tactics and Strategy of Pleading.

4 Am. Jur. Proof of Facts 483, Doing Business.

CJS. 20 C.J.S., Corporations §§ 1813 et seq.

Law Reviews. An analysis of Mississippi's treatment of foreign corporations. 55 Miss. L. J. 259, June, 1985.

Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss. L. J. 271, August, 1987.

§ 79-4-15.02. Consequences of transacting business without authority.

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may

further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of Ten Dollars (\$10.00) for each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

SOURCES: Laws, 1987, ch. 486, § 15.02, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
- 2.-10. [Reserved for future use.]

II. Under Former § 79-3-247.

11. In general.

I. Under Current Law.

1. In general.

Mississippi's closing-door statute, Miss. Code Ann. § 79-4-15.02(a), did not foreclose the bank from enforcement of the notes and deeds of trust it assumed from a mortgage company because the mortgage company did not need a certificate of authority to enter into the mortgage transactions with the homeowners. Furthermore, the statute did not apply because the bank was merely defending the lawsuit brought by the homeowners. *Carson v. McNeal*, 375 F. Supp. 2d 509 (S.D. Miss. 2005).

Federal district court dismissed, on grounds of res judicata, the claims of a foreign corporation, even though the prior dismissal of its claims by a State court had been erroneous where the corporation had not been authorized to do business at that time under Miss. Code Ann. § 79-4-15.02(a), but the State court should have stayed the proceedings under Miss. Code Ann. § 79-4-15.02(c). *Cuba Timber Co., Plaintiff v. Boswell*, 339 F. Supp. 2d 773 (S.D. Miss. 2004).

If a foreign corporation is not transacting business in Mississippi, a certificate of authority is not required in order to maintain an action in Mississippi, as demonstrated by § 79-4-15.02(c) which states that a court may stay a proceeding commenced by a foreign corporation until it determines whether the corporation requires a certificate of authority; since the court is granted some amount of discretion, it is apparent that not all foreign corporations require a certificate to maintain an action. *Mississippi Ins. Guar. Ass'n v. Harkins & Co.*, 652 So. 2d 732 (Miss. 1995).

A foreign corporation was not transacting business in Mississippi, and therefore did not need a certificate of authority in order to maintain an action in Mississippi where the only business contact the corporation had with Mississippi was the actual commencement of the suit, since § 79-4-15.01(b)(1) states that simply maintaining, defending, or settling a proceeding does not constitute "transacting business." *Mississippi Ins. Guar. Ass'n v. Harkins & Co.*, 652 So. 2d 732 (Miss. 1995).

- 2.-10. [Reserved for future use.]

II. Under Former § 79-3-247.

11. In general.

If corporation does not qualify to do business in State of Mississippi, it does

not have access to courts in so far as maintaining action or suit. *Read v. Sonat Offshore Drilling, Inc.*, 515 So. 2d 1229 (Miss. 1987).

If foreign corporation is qualified to do business in State of Mississippi, even though it may not be doing any business, its agent for process may be served and courts have personal jurisdiction over that corporation; actually doing business in state has nothing to do with personal jurisdiction where foreign corporation has qualified to do business in state; corporation qualifying to do business in state, under appropriate statutes, becomes like individual as far as suit is concerned. *Read v. Sonat Offshore Drilling, Inc.*, 515 So. 2d 1229 (Miss. 1987).

In a diversity action by a Florida construction company in federal district court for Mississippi, seeking to recover a construction contract debt from the surety, a Mississippi bank, the trial court committed reversible error when it granted the bank's motion for dismissal on the grounds that the foreign company had engaged in intrastate commerce without qualifying to do so as required by Mississippi law, and thus, was precluded from maintaining an action in Mississippi state or federal court, where contract substantially related to interstate activities, where, under the National Bank Act, the bank was required to be sued where it was located, and where it would have been an impermissible burden on interstate commerce to permit Mississippi courtroom doors to remain closed to such foreign company on events and contracts substantially related to interstate activities. *Diversacon Indus., Inc. v. National Bank of Commerce*, 629 F.2d 1030 (5th Cir. 1980).

Statute prohibiting a foreign corporation which does not obtain from Mississippi's secretary of state a certificate of authority to transact business in the state from maintaining an action in any courts in Mississippi does not deprive a defendant of the right to prevent compulsory counterclaims and third-party complaints. *Environmental Coatings, Inc. v. Baltimore Paint & Chem. Co.*, 617 F.2d 110 (5th Cir. 1980).

Where, at the time a foreign corporation entered into a contract with a franchisee,

it was not authorized to do business within the state, but where it had qualified to transact business within the state by the time the cause of action for default in the payment of the franchise fees accrued, the foreign corporation was entitled to bring suit in state court to enforce its contract with its franchisee. *Honey Fluff Donut Co. v. Daniel, Inc.*, 374 So. 2d 800 (Miss. 1979).

Payment of the contractor's privilege tax by a foreign corporation did not relieve it of the requirement that it obtain a certificate of authority to do business from the secretary of state and, absent such certificate, the contractor was not entitled to sue in state court to enforce a construction lien. *Town & Country Plumbing Co. v. Delta Real Estate Dev., Inc.*, 357 So. 2d 126 (Miss. 1978).

Because it was engaged as well in intrastate business, the general interstate nature of the business of a multistate franchising corporation did not exempt it from the requirement of this section that it obtain a certificate to operate within the state; and a Mississippi franchisee against whom it filed suit to recover franchise fees and other charges was not estopped, by his filing of a counterclaim, from raising this statute as a bar to the corporation's action, where the corporation had incorrectly alleged in its complaint that it was licensed and qualified in Mississippi, and the franchisee properly relied on the pleading by filing a responsive pleading. *Barbee v. United Dollar Stores, Inc.*, 337 So. 2d 1277 (Miss. 1976).

Statute did not apply to a national banking corporation. *Indiana Nat'l Bank v. Roberts*, 326 So. 2d 802 (Miss. 1976).

Chancellor was correct in overruling a motion to dismiss under Code 1972, § 79-3-247 where there was nothing in the record to indicate that the complainant was doing, or had been doing, business in Mississippi. *Crescent Plywood Co. v. Lawrence*, 305 So. 2d 343 (Miss. 1974).

The Mississippi Supreme Court's judgment holding that because of an out-of-state cotton merchant's failure to obtain a certificate of authority to qualify to do business in the state as a foreign corporation, the merchant, pursuant to Code 1942, § 5309-239, could not maintain an

action in the state courts against a resident cotton farmer for his breach of a contract to sell his future cotton crop to the merchant by delivering the cotton to the merchant at a local warehouse-such contract having been negotiated by an independent, local broker whose practice was to telephone the necessary information to the merchant at its out-of-state office, where a contract was prepared and signed by the merchant and then forwarded to the broker to obtain the farmer's signature-is repugnant to the commerce clause of the Federal Constitution (Art I, § 8, cl 3), where (1) even though delivery of the cotton to the merchant's account at the local warehouse, taken in isolation, was an intrastate transaction, nevertheless such delivery was a part of interstate commerce since it was essential for sorting and classifying the cotton as a prerequisite to its shipment in interstate or foreign commerce under the merchant's contracts for sale of the cotton to customers outside the state, and (2) the merchant's contracts with the forum state did not exhibit the sort of localization or intrastate character required in situations where a state seeks to require a foreign corporation to qualify to do business, since the local broker who arranged the contracts was paid on a commission basis and had no authority to execute contracts on the merchant's behalf, and since the merchant had no office or warehouse in the state, and no employees soliciting business or otherwise operating in the state on a regular basis. *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20, 95 S. Ct. 260, 42 L. Ed. 2d 195 (1974).

Mississippi Supreme Court's holding that because of Tennessee cotton merchant's failure to qualify to do business in Mississippi, merchant could not maintain action for Mississippi resident's breach of contract to sell cotton to merchant, held violative of commerce clause of Federal Constitution. *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20, 95 S. Ct. 260, 42 L. Ed. 2d 195 (1974).

The phrase "in any court of this state" as used in Code 1942 § 5309-239, precludes an unqualified corporation's resort, not only to Mississippi state courts but also to federal courts in Mississippi, with

regard to actions arising out of purely intrastate activities. *Fred Hale Mach., Inc. v. Laurel Hill Lumber Co.*, 483 F.2d 58 (5th Cir. 1973).

A statute such as Code 1942 § 5309-239 cannot be enforced if its application would unreasonably burden interstate commerce by prohibiting suits growing out of transactions in interstate commerce. *Fred Hale Mach., Inc. v. Laurel Hill Lumber Co.*, 483 F.2d 58 (5th Cir. 1973).

Where negotiations for the design and supply of certain sawmill machinery were conducted in Louisiana and Mississippi, the Louisiana corporation arranged to supply components from manufacturers in Mississippi and Georgia, and the Louisiana corporation sent its employees to Mississippi in connection with the assembly and installation of the system, this transaction was of an interstate character, and application of Code 1942 § 5309-239 would create an unreasonable burden on interstate commerce, and accordingly, that section did not bar the Louisiana corporation from filing suit in District Court in Mississippi. *Fred Hale Mach., Inc. v. Laurel Hill Lumber Co.*, 483 F.2d 58 (5th Cir. 1973).

Foreign corporation seeking to maintain action for breach of contract was not barred under Miss Code § 79-3-247 [repealed] from bringing action for failure to have certificate of authority to do business in state where foreign corporation maintained no office or bank account in state and had no employees in state and where purpose of contract was for foreign corporation to manage hotel, thus bringing business within reach of Commerce Clause and within exception to definition of "transacting business" under § 79-3-211 [repealed]. *Madden Mgt., Inc. v. First Equities Corp.*, 666 F. Supp. 96 (N.D. Miss. 1987).

A foreign corporation transacting business in Mississippi without having first obtained a certificate of authority, as required by statute, would not be precluded from asserting a third-party complaint in an action in which it was a defendant. *Park v. Cannco Contractors*, 446 F. Supp. 24 (N.D. Miss. 1977).

An Ohio corporation that had acted as purchaser and lessor of frozen drink ma-

chines, buying them from a Georgia corporation and leasing them to individuals in Mississippi who had agreed to lease them in an arrangement made through the Georgia corporation, was not "transacting" business within Mississippi within the meaning of § 79-3-247 [repealed] and could bring an action in the Mississippi district court to recover amounts due on the lease from the lessees. *XYOQUIP, Inc. v. Mims*, 413 F. Supp. 962 (N.D. Miss. 1976).

Diversity action brought by nonresident plaintiffs to recover a brokerage fee allegedly owed by the defendant for two loan commitments was not barred by Code 1972 § 79-3-247 [repealed] where the transactions involved fell within the exception found in Code 1972 § 79-3-211(e) [repealed]. *Ivor B. Clark Co. of Texas, Inc. v. Southern Bus. & Indus. Dev. Co.*, 399 F. Supp. 824 (S.D. Miss. 1974).

A foreign corporation not authorized by statute to do business in Mississippi cannot resort either to the state or to the federal court sitting within the state to enforce its rights unless they arose from and were exempted as a transaction in interstate commerce. *Cone Mills Corp. v. Hurdle*, 369 F. Supp. 426 (N.D. Miss. 1974).

A corporation is doing business for purposes of requiring it to qualify to have access to the courts of Mississippi when the corporation enters the state and carries on a substantial part of its business there on a regular basis, and the question of whether a corporation is so doing business in the state is one of the facts to be determined by the circumstances of each particular case, and the corporation's activities must be judged as a whole. *Humboldt Foods, Inc. v. Massey*, 297 F. Supp. 236 (N.D. Miss. 1968).

A corporation is not doing business in Mississippi merely because it has employees or agents in the state to solicit orders to be transmitted to the principal, or to perform acts incidental to interstate commerce. *Humboldt Foods, Inc. v. Massey*, 297 F. Supp. 236 (N.D. Miss. 1968).

A Tennessee food processing corporation, which entered into a contract with five Mississippi planters under which the latter agreed to cultivate 1000 acres of

green beans and the processor obligated itself to harvest and transport the beans, was not engaged in doing business in Mississippi, and was not prohibited from maintaining an action in federal court in that state, although not qualified to do business there. *Humboldt Foods, Inc. v. Massey*, 297 F. Supp. 236 (N.D. Miss. 1968).

Where the evidence established that the foreign corporation plaintiff was a corporate entity separate and apart from a subsidiary which engaged in business in Mississippi without authority, the association between plaintiff and its subsidiary did not create the relationship of principal and agent between them, and that plaintiff was not engaged in doing business in Mississippi through the activities of its subsidiary, it was not prohibited from bringing a diversity action in the federal courts of that state. *Bunge Corp. v. St. Louis Term. Field Whse. Co.*, 295 F. Supp. 1231 (N.D. Miss. 1969).

A foreign corporation doing business in Mississippi without having qualified as required by statute cannot use the courts of the state to enforce any cause of action that accrued as a result of doing such business, and the fact that the corporation subsequently qualified to do business would not authorize it thereafter to maintain an action on the cause which had previously accrued. *Bunge Corp. v. St. Louis Term. Field Whse. Co.*, 295 F. Supp. 1231 (N.D. Miss. 1969).

The prohibition against a foreign corporation transacting business in Mississippi without a certificate of authority maintaining an action, suit, or proceeding in any court of the state applies to an action in a federal court in the state. *Bunge Corp. v. St. Louis Term. Field Whse. Co.*, 295 F. Supp. 1231 (N.D. Miss. 1969).

When the plaintiff nonresident corporation ceased to do business in this state, it was no longer in violation of the law requiring it to obtain a certificate of authority, and a cause of action thereafter accruing which did not arise directly out of the operation of the business could be maintained in the courts of this state. *Val-U-King Homes, Inc. v. Taylor*, 301 So. 2d 857 (Miss. 1974).

In a suit filed by a foreign corporation having no certificate of authority to do

business in this state, where the record showed that the only business that the plaintiff had transacted in this state was entering into the lease contract with the defendant which was the subject of the suit, the transaction sued upon fell within the exception set up in Code 1972, § 79-3-211(d)[Repealed], and the plaintiff was therefore not barred from bringing suit by Code 1972, § 79-3-247 [repealed]. *Mid-Continent Refrigerator Co. v. Starks*, 298 So. 2d 714 (Miss. 1974).

Where a joint venturer consisted of three foreign corporations, the joint venturer could not maintain an action in negligence for damages where one of the corporations had failed to qualify to do business in Mississippi, even though the connection of such corporation with the transaction consisted only in furnishing its share of the capital needed to carry out the contract in the state and the actual performance of the contract was accomplished by another of the joint venturers. *Scott Co. v. Enco Constr. Co.*, 264 So. 2d 409 (Miss. 1972).

For the purposes of Code 1942, § 5309-239, providing that a foreign corporation transacting business in Mississippi without a certificate of authority shall not be permitted to maintain any action, a member of a joint venturer is transacting business in the state when one of the joint venturers is transacting in the state the business for which the joint venturer was formed. *Scott Co. v. Enco Constr. Co.*, 264 So. 2d 409 (Miss. 1972).

A strict construction of this statute is required, it being penal, before access to the state courts is precluded to a foreign corporation found to be "doing business" in the state, and the question of whether a foreign corporation is doing business within the state must be determined upon an ad hoc basis. *S & A Realty Co. v. Hilburn*, 249 So. 2d 379 (Miss. 1971).

Where a foreign corporation had a 10 year lease within the state and subsequently renewed for an additional 10 years, paid the agreed rentals under both the initial and renewal leases, and proposed to execute a purchase option provided therein, and where the charter of

the corporation provided that the corporation's purpose was to buy, sell, lease, exchange, build and construct real estate, the corporation was transacting business within this section [Code 1942, § 5309-239], barring it from the courts because not qualified to do so. *S & A Realty Co. v. Hilburn*, 249 So. 2d 379 (Miss. 1971).

Code 1942, § 5309-239, prohibiting foreign corporations lacking a certificate of authority to maintain any action, suit or proceeding in the state, is a punitive statute designed to penalize those foreign corporations doing business in the State of Mississippi without qualifying as required by Code 1942, § 5309-221. *Alabama Live Poultry, Inc. v. Ervin*, 246 So. 2d 915 (Miss. 1971).

An Alabama corporation which had never received a license or authorization to do business in Mississippi, and which leased trucks for the purpose of hauling chickens in its trucking business, purchasing the chickens in Mississippi and delivering them to a Mississippi destination, was doing business in Mississippi and could not maintain an attachment suit against the owner of the trucks, under the provisions of this section [Code 1942, § 5309-239]. *Alabama Live Poultry, Inc. v. Ervin*, 246 So. 2d 915 (Miss. 1971).

The penalty imposed against a foreign corporation doing business in Mississippi without having first qualified is that it shall not be permitted to avail itself of the state courts to enforce a cause of action accruing to it prior to the time it qualified to do business; but the contracts and other acts of a foreign corporation entered into or performed prior to its qualification are not rendered invalid. *Wood v. Gulf States Capital Corp.*, 217 So. 2d 257 (Miss. 1968).

A foreign corporation doing business in Mississippi without having qualified as required by statute cannot use the courts of this state to enforce any cause of action that accrued as the result of doing such business, and in order to avail itself of the state courts to enforce a cause of action, a foreign corporation doing business in the state must have qualified to do business when the cause of action accrued. *Parker v. Lin-Co Producing Co.*, 197 So. 2d 228 (Miss. 1967).

RESEARCH REFERENCES

ALR. Effect of execution of foreign corporation's contract which, while executory, was unenforceable because of non-compliance with conditions of doing business in state. 7 A.L.R.2d 256.

Rights of assignee or subsequent holder of negotiable paper executed to a foreign corporation doing business in state without compliance with local requirements. 80 A.L.R.2d 465.

Right to protection of corporate name, as between domestic corporation and foreign corporation not qualified to do business in state. 26 A.L.R.3d 994.

Foreign corporation's leasing of personal property as doing business within statutes prescribing conditions of right to do business. 50 A.L.R.3d 1020.

Construction work by foreign corporation as doing business for purposes of statute requiring foreign corporation to qualify as condition of access to local courts. 90 A.L.R.3d 937.

State regulation of land ownership by alien corporation. 21 A.L.R.4th 1329.

Personal liability of stockholder, officer, or agent for debt of foreign corporation

doing business in the state. 27 A.L.R.4th 387.

What constitutes doing business within state for purposes of state "closed door" statute barring unqualified or unregistered foreign corporation from local courts — modern cases. 88 A.L.R.4th 466.

Application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute as affected by compliance after commencement of action. 23 A.L.R.5th 744.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 240 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Forms 31-35.

CJS. 20 C.J.S., Corporations §§ 1843-1867.

Law Reviews. Symposium on Mississippi Rules of Civil Procedure: Joinder of claims and parties-Rules 13, 14, 17 and 18. 52 Miss. L. J. 37, March, 1982.

An analysis of Mississippi's treatment of foreign corporations. 55 Miss. L. J. 259, June, 1985.

§ 79-4-15.03. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 79-4-15.06;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The address of its registered office in this state and the name of its registered agent at that office; and

(6) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

SOURCES: Laws, 1987, ch. 486, § 15.03, eff from and after January 1, 1988.

Cross References — Requirements of this section for obtaining original certificate of authority apply to obtaining amended certificate, see § 79-4-15.04.

Application of foreign professional corporation for certificate of authority to contain information required by this section, see § 79-10-93.

Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-219.

12. Under former § 79-3-221.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-219.

A foreign corporation transacting business in Mississippi without having first obtained a certificate of authority, as required by statute, would not be precluded from asserting a third-party complaint in an action in which it was a defendant. *Park v. Cannco Contractors*, 446 F. Supp. 24 (N.D. Miss. 1977).

12. Under former § 79-3-221.

A non-profit foreign corporation, operating a university in another state, which leased a farm which it owned in this state, was not required to file a copy of its charter or articles of incorporation in the office of the secretary of state under this section [Code 1942, § 5343]. *Gillentine v. Illinois Wesleyan Univ.*, 194 F.2d 970 (5th Cir. 1952).

Execution of a mineral lease in Mississippi covering land located in Mississippi, which contract was to be performed in Mississippi, constituted doing business within that state by a foreign corporation. *Calcote v. Texas Pac. Coal & Oil Co.*, 157 F.2d 216, 167 A.L.R. 413 (5th Cir. 1946), cert. denied, 329 U.S. 782, 67 S. Ct. 205, 91 L. Ed. 671 (1946), reh'g denied, 329 U.S. 830, 67 S. Ct. 356, 91 L. Ed. 704 (1946).

The usual test of whether a foreign corporation is doing business within the

meaning of the statutes is whether or not it is doing such acts as are within the function of its corporate powers, and where the business so performed is substantial in scope such corporation is held to be doing business. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

Foreign corporation, engaged in doing highway construction as its chief corporate function, was doing business in the state in the performance of a contract with the state highway commission for the construction of a link of state highway, within the purview of statutes requiring it to file a copy of its charter and designate an agent for the service of process. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

Performance of contract between foreign highway construction corporation and state highway commission for construction of a link of highway within state was not an isolated transaction within the rule that an isolated dealing within the state by a foreign corporation is not doing business in the state so as to require filing of copy of charter and designation of agent for service of process. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

Permitting highway commission, in suit against it by foreign corporation to recover for damages for delay and additional compensation for extra work under contract with commission for construction of highway in state, to set up defense that corporation failed to qualify as a foreign corporation doing business in the state, after suit had been pending for three years and complainant had taken testimony for 20 days and rested, was not error, in absence of a showing that commission had notice of the noncompliance with the statutes prior to the taking of the evidence. *Newell*

Contracting Co. v. State Hwy. Comm'n, 195 Miss. 395, 15 So. 2d 700 (1943).

Foreign corporation doing business in state in performance of contract with highway commission for construction of highway could not recover damages for delay occasioned by commission nor additional compensation for extra work performed under such contract during time it failed to comply with provision requiring filing of a copy of its charter and designation of an agent for service of process. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

A foreign finance company was subject to the privilege tax imposed by Laws 1940, Ch. 110 on the business of acquiring notes and other securities whereby title is retained until payment of the purchase price of tangible personal property sold on installment payment contracts and the like, notwithstanding that such company did not file its corporate charter nor qualify to do business within the meaning of section 5319. *Stone v. General Elec. Contracts Corp.*, 193 Miss. 317, 7 So. 2d 811 (1942).

Where the sale of phonograph instruments to Mississippi residents by an Illinois corporation, which had no resident agent and had not filed a copy of its charter, was made through a Texas distributor, and was interstate in character, the fact that the distributor, who was compensated by a sales commission, had some sort of an understanding with the purchasers that the instrument would be kept in repair by the distributor, and the distributor did from time to time render this service, did not operate to take away the interstate character of the sale so as to preclude the corporation from foreclosing a chattel mortgage on the instrument. *Smith v. J.P. Seeburg Corp.*, 192 Miss. 563, 6 So. 2d 591 (1942).

This section [Code 1942, § 5343] is applicable only to corporations doing intrastate business. *Morrison v. Guaranty Mtg. & Trust Co.*, 191 Miss. 207, 199 So. 110 (1940).

The fact that local correspondents, who received and transmitted applications for loans to a foreign loan corporation, were or were not agents of the corporation,

rather than of the borrower, was immaterial in determining that the corporation was not doing business within the state, and so was not subject to the requirement as to filing a copy of its charter and appointing an agent to receive service of process. *Morrison v. Guaranty Mtg. & Trust Co.*, 191 Miss. 207, 199 So. 110 (1940).

A foreign corporation was not doing business in Mississippi within the meaning of the statute, where it appeared that it was engaged in the business of procuring loans, its local agent sending the applications to the corporation's home office for examination, and acceptance or rejection, and, if accepted, the transaction in connection with the loan was conducted through the home office, and the corporation required the borrower to pay its commission for handling the loan at the home office, or to execute notes payable to it in the city in which its home office was located. *Morrison v. Guaranty Mtg. & Trust Co.*, 191 Miss. 207, 199 So. 110 (1940).

In an action on a note by a foreign corporation, in which the defendant pleaded abatement on the ground that the plaintiff had not filed a copy of its charter or appointed an agent to receive service of process, the requirement of interrogatories propounded by the defendant as to all transactions of the corporation within the state from 1923 to 1931 would impose such a burden upon the right to sue as practically to defeat it, and so would not be done, where it appeared that many of the transactions had no relation to the suit before the court and so were irrelevant, there was no index to the plaintiff's files, which were stored in such a manner that it was practically impossible to go through them, and the defendant had not accepted an offer to give them access to the files. *Morrison v. Guaranty Mtg. & Trust Co.*, 191 Miss. 207, 199 So. 110 (1940).

A foreign corporation, executing a contract in Minnesota for the sale of goods at wholesale, to be sold by the other party thereto in Mississippi, which contract required the purchaser to report his sale to the corporation, to designate his sales territory, and to remit a percentage of the

proceeds of such sale, and permitted him to return unsold goods, was not doing business in Mississippi so as to require it to file a copy of its charter with the secretary of state and to appoint such officer as its process agent, and so as to preclude its resort to the court for failure to comply with such requirement, such contract being a contract of sale and not a contract of agency. *Watson v. J.R. Watkins Co.*, 188 Miss. 435, 193 So. 913 (1940).

However, an undertaking by a foreign corporation in connection with a conditional sale of an ice cream dispenser, otherwise an interstate transaction, to service it gratis for a year, gives the transaction a local character, rendering the contract of conditional sale unenforceable by reason of the corporation's failure to comply with the requirement of this section [Code 1942, § 5343] with regard to filing a copy of its charter in order to do business in the state. *Case v. Mills Novelty Co.*, 187 Miss. 673, 193 So. 625, 126 A.L.R. 1102 (1940).

Where a foreign corporation fails to file a copy of its charter, a contract by which an intrastate sale was made by it is void. *Case v. Mills Novelty Co.*, 187 Miss. 673, 193 So. 625, 126 A.L.R. 1102 (1940).

Under statute (Laws 1934, Ch. 121), imposing franchise tax on corporations "doing business" in the state, which was defined to include each and every act, power or privilege exercised or enjoyed in the state as an incident to or by virtue of the powers and privileges acquired by the nature of the organization, a foreign corporation is "doing business" in the state and is subject to tax as soon as it gets ready to be active by having property there and enjoying the protection of the state for it, and qualifies formally by filing its charter and naming its agent for the service of process. *Stone v. Interstate Natural Gas Co.*, 103 F.2d 544 (5th Cir. 1939), *aff'd*, 308 U.S. 522, 60 S. Ct. 292, 84 L. Ed. 442 (1939), *reh'g denied*, 308 U.S. 639, 60 S. Ct. 381, 84 L. Ed. 530 (1940).

Foreign corporation purchasing commercial paper secured by trust deeds in state, and collecting notes and foreclosing trust deeds by agent in state, who leased property pending foreclosures to realize on mortgages, held not "doing business in

state." *North Am. Mtg. Co. v. Hudson*, 176 Miss. 266, 168 So. 79 (1936).

Contract for purchase of property sold on foreclosure under deed of trust which had been executed to foreign corporation not having filed its charter with state, held not void as to third persons purchasing property. *Citizens' Bank v. Grigsby*, 170 Miss. 655, 155 So. 684 (1934).

Foreign corporation soliciting subscriptions within state, with intention of thereafter constructing canning factory, was doing business within state. *Peterman Constr. & Supply Co. v. Blumenfeld*, 156 Miss. 55, 125 So. 548 (1930).

Foreign corporation's compliance with law cannot as respects particular contract, be made to relate back to date of its execution. *Peterman Constr. & Supply Co. v. Blumenfeld*, 156 Miss. 55, 125 So. 548 (1930).

Test whether foreign corporation is doing business within state is whether it is doing acts within function of corporate powers. *Peterman Constr. & Supply Co. v. Blumenfeld*, 156 Miss. 55, 125 So. 548 (1930).

That foreign corporation did business in state without filing charter held not to prevent it from selling property in state to liquidate its affairs; this section [Code 1942, § 5343] only denies corporation the right to enforce rights growing out of business transacted contrary to statute. *Long Beach Canning Co. v. Clark*, 141 Miss. 177, 106 So. 646 (1926); *Harleston v. West La. Bank*, 129 Miss. 111, 91 So. 423 (1922).

Foreign corporation not required to file copy of charter to sell property in this state; sale by foreign corporation of specific property in state held not doing business therein. *Long Beach Canning Co. v. Clark*, 141 Miss. 177, 106 So. 646 (1926); *Harleston v. West La. Bank*, 129 Miss. 111, 91 So. 423 (1922).

Contract between foreign corporation and one selling its newspapers, not as agent, but on his own account for purchase of newspapers on credit, contemplated a sale of the newspapers by a foreign corporation from without the state, and did not constitute doing business within the state, under this section [Code 1942, § 5343]. *Item Co. v. Shipp*, 140 Miss. 699, 106 So. 437 (1925).

Single transaction by foreign corporation is not doing business in state. *Item Co. v. Shipp*, 140 Miss. 699, 106 So. 437 (1925).

Sale of motor trucks by order through agent of foreign corporation resident in state held interstate commerce. *City Sales Agency, Inc. v. Smith*, 126 Miss. 202, 88 So. 625 (1921).

Failure of foreign corporation to comply with this section [Code 1942, § 5343] does not withdraw from it recognition of its status as a corporation. *Springfield Grocery Co. v. Devitt*, 126 Miss. 169, 88 So. 497 (1921).

A contract, whereby a foreign corporation purchased cotton seed “F.O.B. Como,

Miss., mill weights to govern,” for shipment to the foreign state, where the mills were located and where the contract was required to be approved, held to be an interstate transaction, and corporation could recover for its breach in Mississippi without complying with this section [Code 1942, § 5343]. *Union Cotton Oil Co. v. Patterson*, 116 Miss. 802, 77 So. 795 (1918).

Foreign corporation which had not complied with this section [Code 1942, § 5343] could not enforce note given by citizen for a debt due it in the courts of this state. *Quartette Music Co. v. Haygood*, 108 Miss. 755, 67 So. 211 (1915).

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 187, 219, 220, 235 et seq.

CJS. 20 C.J.S., Corporations § 1818.

Foreign corporation not required to file copy of charter to sell property in this state; sale by foreign corporation of spe-

cific property in state held not doing business therein. *Long Beach Canning Co. v. Clark*, 141 Miss. 177, 106 So. 646 (1926); *Harleston v. West La. Bank*, 129 Miss. 111, 91 So. 423 (1922).

§ 79-4-15.04. Amended certificate of authority.

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

- (1) Its corporate name;
- (2) The period of its duration; or
- (3) The state or country of its incorporation.

(b) The requirements of Section 79-4-15.03 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

SOURCES: Laws, 1987, ch. 486, § 15.04, eff from and after January 1, 1988.

Cross References — Requirement that foreign corporation which changes its name obtain amended certificate of authority to transact business, see § 79-4-15.06.

Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

RESEARCH REFERENCES

Am Jur. 8 Am. Jur. Legal Forms 2d, Foreign Corporations § 122:36.

§ 79-4-15.05. Effect of certificate of authority.

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in Sections 79-4-1.01 et seq.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by Sections 79-4-1.01 et seq. is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.

(c) Sections 79-4-1.01 et seq. do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

SOURCES: Laws, 1987, ch. 486, § 15.05, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

JUDICIAL DECISIONS**I. Under Current Law.**

1.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-213.

12. Under former § 79-3-223.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former Law.

11. Under former § 79-3-213.

If foreign corporation is qualified to do business in State of Mississippi, even though it may not be doing any business, its agent for process may be served and courts have personal jurisdiction over that corporation; actually doing business in state has nothing to do with personal jurisdiction where foreign corporation has qualified to do business in state; corporation qualifying to do business in state, under appropriate statutes, becomes like individual as far as suit is concerned. *Read v. Sonat Offshore Drilling, Inc.*, 515 So. 2d 1229 (Miss. 1987).

Neither the maintaining nor defending of any action or suit constitutes "transacting business" in the state under Missis-

sippi law. *Hyde Constr. Co. v. Koehring Co.*, 321 F. Supp. 1193 (S.D. Miss. 1969).

A foreign corporation which has never qualified to do business in Mississippi is not precluded from suing there on a policy of liability insurance issued to it in another state, in respect of a judgment recovered against it in Mississippi after its withdrawal from the state for negligence in the performance of services there. *Aerial Agric. Serv. of Mont., Inc. v. Till*, 207 F. Supp. 50 (N.D. Miss. 1962).

Foreign corporation doing business in state in performance of contract with highway commission for construction of highway could not recover damages for delay occasioned by commission nor additional compensation for extra work performed under such contract during time it failed to comply with provision requiring filing of a copy of its charter and designation of an agent for service of process. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

Permitting highway commission, in suit against it by foreign corporation to recover for damages for delay and additional compensation for extra work under contract with commission for construction of highway in state, to set up defense that corpo-

ration failed to qualify as a foreign corporation doing business in the state, after suit had been pending for three years and complainant had taken testimony for 20 days and rested, was not error, in absence of a showing that commission had notice of the noncompliance with the statutes prior to the taking of the evidence. *Newell Contracting Co. v. State Hwy. Comm'n*, 195 Miss. 395, 15 So. 2d 700 (1943).

Failure of foreign corporation to file copy of its charter with secretary of state does not affect its status. *Springfield Grocery Co. v. Devitt*, 126 Miss. 169, 88 So. 497 (1921).

Foreign corporations held authorized to do business in this state by this section [Code 1942, § 5344] and comity of nations. *Springfield Grocery Co. v. Devitt*, 126 Miss. 169, 88 So. 497 (1921).

Foreign corporations can do nothing that domestic corporations are prohibited from doing. *State ex rel. Att'y Gen. v. Edward Hinds Lumber Co.*, 106 Miss. 780, 64 So. 729 (1914).

Statutes limiting holdings of domestic corporations being legislative declaration of public policy apply to foreign corporations. *State ex rel. Att'y Gen. v. Edward Hinds Lumber Co.*, 106 Miss. 780, 64 So. 729 (1914).

In a suit to cancel an acquittance, and to enforce an accounting between the parties in case a discovery be necessary to obtain data, the fact that defendant in such suit is a foreign corporation having its office, books and assets out of the state, and that the court may find itself powerless to grant administrative relief, if defendant

declines to make discovery, is not a cause for declining to sustain the same. *Clark v. Equitable Life Assurance Soc.*, 76 Miss. 22, 23 So. 453 (1898).

Under this section [Code 1942, § 5344] foreign corporations may sue and be sued in this state as individual non-residents may sue and be sued. *Pullman Palace-Car Co. v. Lawrence*, 74 Miss. 782, 22 So. 53 (1897).

It is no defense to a transitory action of trespass brought in this state that the wrong was done and the injury inflicted in another state, and that both plaintiff and defendant, a foreign corporation, were at the time, are now and have been continuously since, residents and citizens of such other states. *Pullman Palace-Car Co. v. Lawrence*, 74 Miss. 782, 22 So. 53 (1897).

Although a note and trust deed given by a foreign corporation to secure a loan be void in the state where made, because of a disregard of statutory requirements, it cannot repudiate its contract without restoring the status quo by returning the money borrowed. Though the contract be void, if it be one free from moral turpitude, the corporation is liable for the money received thereunder. *Williams v. Bank of Commerce*, 71 Miss. 858, 16 So. 238, 42 Am. St. R. 503 (1894).

12. Under former § 79-3-223.

A foreign corporation, whose certificate of authority to do business within the State was suspended after it filed a breach of lease action, was not required to become reinstated as a condition for proceeding to trial. *Capital Assocs. v. Sally Southland, Inc.*, 529 So. 2d 640 (Miss. 1988).

RESEARCH REFERENCES

ALR. Foreign corporation's leasing of personal property as doing business within statutes prescribing conditions of right to business. 50 A.L.R.3d 1020.

Construction work by foreign corporation as doing business for purposes of statute requiring foreign corporation to qualify as condition of access to local courts. 90 A.L.R.3d 937.

State regulation of land ownership by alien corporation. 21 A.L.R.4th 1329.

Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 27 A.L.R.4th 387.

Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 A.L.R.4th 392.

CJS. 20 C.J.S., Corporations §§ 1810-1827.

Law Reviews. An analysis of Mississippi's treatment of foreign corporations. 55 Miss. L. J. 259, June, 1985.

§ 79-4-15.06. Corporate name of foreign corporation.

(a) If the corporate name of a foreign corporation does not satisfy the requirements of Section 79-4-4.01, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(1) May add the word "corporation," "incorporated," "company" or "limited," or the abbreviation "corp.," "inc.," "co." or "ltd.," to its corporate name for use in this state; or

(2) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under Section 79-4-4.02 or 79-4-4.03;

(3) The fictitious name of another foreign corporation authorized to transact business in this state; and

(4) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of Section 79-4-4.01, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of Section 79-4-4.01 and obtains an amended certificate of authority under Section 79-4-15.04.

SOURCES: Laws, 1987, ch. 486, § 15.06, eff from and after January 1, 1988.

Cross References — Applicability of this section to registration of foreign corporation's corporate name, see § 79-4-4.03.

Requirement that application by foreign corporation for certificate of authority to transact business set forth name that satisfies requirements of this section, see § 79-4-15.03.

Mississippi Nonprofit Corporation Act, see §§ 79-11-101 et seq.

Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

RESEARCH REFERENCES

ALR. Incorporation of company under particular name as creating exclusive right to such name. 68 A.L.R.3d 1168.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 163 et seq.

CJS. 20 C.J.S., Corporations § 1887.

§ 79-4-15.07. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
 - (i) An individual who resides in this state and whose business office is identical with the registered office;
 - (ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
 - (iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

SOURCES: Laws, 1987, ch. 486, § 15.07, eff from and after January 1, 1988.

Cross References — Service of process, notice or demand on foreign corporation which has no registered agent or its registered agent cannot be served, see § 79-4-15.10.

Failure to have a registered agent or registered office in Mississippi for 60 days or more as grounds for revocation of certificate of authority, see § 79-4-15.30.

Revocation of foreign corporation's certificate of authority as not terminating the authority of the registered agent of the corporation, see § 79-4-15.31.

Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.
- 2.-10. [Reserved for future use.]

II. Under Former § 79-1-25.

11. In general.

I. Under Current Law.

1. In general.

Agents appointed under Miss. Code Ann. § 79-4-15.07 are agents in fact, rather than statutory agents, because the party appointing the agent can choose the identity of the agent. *Burton v. Cont'l Cas. Co.*, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 79299 (S.D. Miss. Oct. 30, 2006).

2.-10. [Reserved for future use.]

II. Under Former § 79-1-25.

11. In general.

Section fixing venue of suits in state

courts either in the district where the cause of action accrued or where the defendant has its principal place of business is inapplicable to prevent a resident of the federal northern district of Mississippi from suing a foreign corporation having its principal place of business in the southern district in the federal court of the northern district rather than the southern district, even though in obedience to laws of Mississippi the corporation had designated an agent for service of process who resided in the southern district and the cause of action accrued in that district, where a federal statute fixing venue permitted suit in either the northern or the southern district. *Murphree v. Mississippi Pub. Corp.*, 149 F.2d 138 (5th Cir. 1945), *aff'd*, 326 U.S. 438, 66 S. Ct. 242, 90 L. Ed. 185 (1946).

RESEARCH REFERENCES

ALR. Personal liability of stockholder, officer, or agent for debt of foreign corporation doing business in the state. 27 A.L.R.4th 387.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 229, 233, 510-513.

8 Am. Jur. Legal Forms 2d, Foreign Corporations §§ 122:25-122:27, 122:52.

12 Am. Jur. Pl & Pr, Form (Rev), Foreign Corporations, Form 2.

20 Am. Jur. Pl & Pr Forms (Rev), Process, Forms 261, 262.

CJS. 20 C.J.S., Corporations §§ 1815-1817.

§ 79-4-15.08. Change of registered officer or registered agent of foreign corporation.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (1) Its name;
- (2) The street address of its current registered office;
- (3) If the current registered office is to be changed, the street address of its new registered office;
- (4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any foreign corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

SOURCES: Laws, 1987, ch. 486, § 15.08, eff from and after January 1, 1988.

Cross References — Service of process, notice or demand on foreign corporation which has no registered agent or its registered agent cannot be served, see § 79-4-15.10.

Failure to inform Secretary of State that registered agent or registered office has changed as grounds for revocation of certificate of authority, see § 79-4-15.30.

Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations § 229, 233.

8 Am. Jur. Legal Forms 2d, Foreign Corporations §§ 122:37, 122:38, 122:52.

CJS. 20 C.J.S., Corporations §§ 1815-1817.

§ 79-4-15.09. Resignation of registered agent of foreign corporation.

(a) The registered agent of a foreign corporation may resign his agency appointment by signing and delivering to the Secretary of State for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed.

SOURCES: Laws, 1987, ch. 486, § 51.09, eff from and after January 1, 1988.

Cross References — Requirement that Secretary of State deliver filed documents to corporation or representative after filing, see § 79-4-1.25.

Service of process, notice or demand on foreign corporation which has no registered agent or its registered agent cannot be served, see § 79-4-15.10.

Failure to inform Secretary of State, that registered agent has resigned, or that registered office has been discontinued as grounds for revocation of its certificate of authority, see § 79-4-15.30.

Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations § 229, 233. **CJS.** 20 C.J.S., Corporations §§ 1815-1817.

8 Am. Jur. Legal Forms 2d, Foreign Corporations §§ 122:47-122:49.

§ 79-4-15.10. Service of foreign corporation.

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under Section 79-4-15.20; or

(3) Has had its certificate of authority revoked under Section 79-4-15.31.

(c) Service is perfected under subsection (b) at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

SOURCES: Laws, 1987, ch. 486, § 15.10, eff from and after January 1, 1988.

Cross References — Requirement that Secretary of State deliver filed documents to corporation or representative after filing, see § 79-4-1.25.

Requirement that Secretary of State give notice in accordance with this section to foreign corporation for which he has determined that grounds exist for the revocation

of its certificate of authority, and notice when certificate of authority has been revoked, see § 79-4-15.31.

Foreign corporation's right to appeal revocation of its certificate of authority 30 days after service is perfected under § 79-4-15.10, see § 79-4-15.32.

Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Nonprofit Corporation Act, see §§ 79-11-363 through 79-11-381.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
- 2.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

A. Former § 79-1-27.

11. In general.
12. What constitutes doing business.
13. Service of process.
14. Attachment suits.

B. Former § 79-1-29.

15. In general.
16. Effectiveness of service of process in particular cases.
17. Defective return of process.
18. Mailing copy of process.
19. Appearance of defendant specially as conferring jurisdiction.
20. Application of section to particular corporations.

C. Former § 79-3-229.

21. In general.

I. UNDER CURRENT LAW.

1. In general.

There was no statutory or other authority that would allow a Mississippi court to compel nonresident, non-parties to the litigation to produce documents in a breach of contract dispute between a seed company and a corporation. *Syngenta Crop Prot., Inc. v. Monsanto Co.*, 908 So. 2d 121 (Miss. 2005).

2.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

A. Former § 79-1-27.

11. In general.

Even when jurisdiction is sought under § 79-1-27 [repealed], it is necessary for

plaintiff to prove that nonresident corporation "does business" in Mississippi. *Rittenhouse v. Mabry*, 832 F.2d 1380 (5th Cir. 1987), but see, *Gross v. Chevrolet Country*, 655 So. 2d 873 (Miss. 1995).

A nonresident manufacturer of grinding machines was not amenable to suit in Mississippi by a Louisiana resident who had worked in Mississippi as an operator of such machine and who had allegedly become permanently disabled as a result of the constant inhalation of dust particles at work, where, inter alia, defendant manufacturer did not have a single employee in the state when the cause of action accrued or when the complaint was filed, even though a single corporate employee subsequently moved to the state and was served process, and where defendant had never paid state taxes or availed itself of the protection of any state laws; further, plaintiff had only availed himself of the protection of Mississippi's laws to the limited extent that he worked and traveled in the state. *Washington v. Norton Mfg., Inc.*, 588 F.2d 441 (5th Cir. 1979), cert. denied, 442 U.S. 942, 99 S. Ct. 2886, 61 L. Ed. 2d 313 (1979).

The Mississippi statutes providing for the method of service on a resident or a qualified foreign corporation, the "doing business" statute, and the statute providing for substituted service on any corporation doing business in the state, must be read together, and such reading leads to the inescapable conclusion that effective process under these statutes presupposes a factual determination that the foreign corporation is doing business in the State of Mississippi. *Hyde Constr. Co. v. Koehring Co.*, 321 F. Supp. 1193 (S.D. Miss. 1969).

Under statute, foreign corporations are suable only when found doing business in state. *Knower v. Baldwin*, 195 Miss. 166,

15 So. 2d 47 (1943); *Arnett v. Carol C. & Fred R. Smith, Inc.*, 165 Miss. 53, 145 So. 638 (1932).

Judgment rendered against road contractor and his foreign corporate surety held not void because when rendered surety had been dissolved and was in hands of receiver. *Rawlings v. AMOCO*, 173 Miss. 683, 161 So. 851 (1935).

Foreign corporations dissolved in domicile of its origin may be deemed alive in foreign state, so far as to afford remedies to its own citizens against property within its jurisdiction. *Rawlings v. AMOCO*, 173 Miss. 683, 161 So. 851 (1935).

Chancery court was without territorial jurisdiction of nonresident national bank not doing business in state. *First Nat'l Bank v. Mississippi Cottonseed Prods. Co.*, 171 Miss. 282, 157 So. 349 (1934).

Court, having acquired jurisdiction of foreign corporation, garnishee in suit by non-resident employee-creditor, by personal service on agent of corporation, could require answer and condemn any indebtedness due by corporation to its employee-creditor under employment contract made and performable outside state. *Bean v. Bean*, 166 Miss. 434, 147 So. 306 (1933).

Foreign corporation designating resident agent is placed, as regards venue in transitory action, in same position as domestic corporation. *Sandford v. Dixie Constr. Co.*, 157 Miss. 626, 128 So. 887 (1930).

This section [Code 1942, § 5345] does not apply to actions originating prior to its adoption. *Saxony Mills v. Wagner & Co.*, 94 Miss. 233, 47 So. 899, 136 Am. St. R. 575, 19 Am. Ann. Cas. 199 (1909).

12. What constitutes doing business.

Section 79-1-27 [repealed] applies only to non-resident corporations found doing business in Mississippi; non-resident corporation is not doing business in Mississippi where it has neither employees nor representatives in Mississippi, does not maintain offices, bank accounts or other property in state, and only contract with state is receipt of telephone and catalog orders and sale of product to Mississippi retailers. *Schmid v. Roehm GmbH*, 617 F. Supp. 655 (S.D. Miss. 1985).

Sections 13-3-57 and 79-1-27 [repealed] must be harmonized to support state's valid policy of opening doors of Mississippi courts to foreign corporations found doing business in state to sue and be sued from all bona fide causes of action; merely doing business in Mississippi is not sufficient to support exercise of personal jurisdiction, and business in Mississippi of non-resident defendant must be of systematic and ongoing nature, cause of action must be incident to business activity, and assertion of jurisdiction must not offend notions of fairness and substantial justice; busline which does not maintain ticket agents, representatives, employees, offices, or property in Mississippi and which does not advertise or solicit business or negotiate or execute contracts in Mississippi but whose charter service has merely passed through state is not subject to jurisdiction for cause of action which does not arise out of activities of busline in state. *Allen v. Jefferson Lines*, 610 F. Supp. 236 (S.D. Miss. 1985).

Pennsylvania corporation which maintains no offices, employees, or representatives in Mississippi, and negotiates no contracts in Mississippi is not "doing business" in Mississippi under § 79-1-27 [repealed], even though its products are sold on regular basis in Mississippi, where such sales are only as result of marketing products nationally to independent distributors who in turn sell to wholesalers and retailers, or who sell in their own outlet stores in various states. *Smith v. DeWalt Prods. Corp.*, 743 F.2d 277 (5th Cir. 1984).

Mississippi Code § 79-1-27 [repealed], providing that any corporation doing business in Mississippi is subject to suit there, must be construed and harmonized with § 13-3-57 "doing business clause" which cannot be used by non-resident plaintiff; to extent jurisdiction over nonresident corporation in suit by non-resident plaintiff on authority of § 79-1-27 [repealed] would be contrary to intention of Mississippi legislature. *Smith v. DeWalt Prods. Corp.*, 743 F.2d 277 (5th Cir. 1984).

The fact that the president of a foreign corporation made several trips to Mississippi in connection with plans to be performed on certain trucks and had repre-

sentatives who traveled within the state soliciting the sale and installation of their products, was not sufficient to satisfy the minimal contact requirement necessary for the courts of Mississippi to acquire jurisdiction in an action against the corporation which had installed in Alabama, in a manner alleged to be negligent, a braking system on a truck which crashed into the plaintiff's store, where all of the actual work of assembly and installation by the corporation was performed in Alabama and the owners of trucks delivered them to the plant in Alabama for these services. *Collins v. Truck Equip. Sales, Inc.*, 231 So. 2d 187 (Miss. 1970).

Neither the fact that a manufacturer of equipment sold its products to Mississippi distributors or wholesalers, nor the fact that the manufacturer had employees on an average of 17 or 18 per year visiting within Mississippi to give assistance to the distributors in the sale of equipment manufactured by it and to help repair and adjust such equipment, standing alone, would compel a finding that the manufacturer is or was "doing business" within the State of Mississippi under the provisions of Code 1942, § 1437 or § 5345. *Hyde Constr. Co. v. Koehring Co.*, 321 F. Supp. 1193 (S.D. Miss. 1969).

Where a Wisconsin corporate manufacturer had 10 distributors in Mississippi, made substantial sales to its distributors, sent an average of 17 employees into the state each year to give assistance to its distributors, had several pieces of equipment operating within the state, extended and secured credit within the state and made contracts with its distributors, giving it considerable control over their activities, the corporation was "doing business" in Mississippi within the "long-arm" and "doing business" statutes. *Hyde Constr. Co. v. Koehring Co.*, 321 F. Supp. 1193 (S.D. Miss. 1969).

When an agent of foreign finance corporation was served when he came into the state to repossess an automobile purchased by the plaintiff in a tort action for false accusations allegedly made by such finance corporation, and the foreign corporation had purchased the conditional sales contract made by the plaintiff from an automobile dealer in Louisiana, the

defendant finance corporation was not doing business in the state so as to be subject to the jurisdiction of the court. *Dillon v. Allen-Parker Co.*, 223 Miss. 359, 78 So. 2d 357 (1955).

A financial agent may be appointed by a nonresident landlord to pay a debt or collect rents without being constituted an agent on whom process may be served. *Gillentine v. Illinois Wesleyan Univ.*, 194 F.2d 970 (5th Cir. 1952).

The mere presence of an agent within the state, transacting some business for a foreign corporation, is not enough to subject the latter to suit unless the agent's activities are such as to warrant the inference that the corporation itself is present and doing business within the state. *Gillentine v. Illinois Wesleyan Univ.*, 194 F.2d 970 (5th Cir. 1952).

Where a foreign religious, charitable and educational corporation was not licensed to do business in the State of Mississippi, had not appointed any agent for service of process in that state and maintained no office or place of business of any kind, and its sole business was operating a university, the fact that the corporation, which owned a farm in this state which it leased to a tenant, furnished money to build a gin house on leased land and for installation of gin machinery therein does not constitute doing business. *Gillentine v. Illinois Wesleyan Univ.*, 194 F.2d 970 (5th Cir. 1952).

Foreign corporation was not "doing business" in state so as to subject it to suit by service of process on its traveling salesman to recover damages for personal injuries growing out of automobile collision, where such salesman sold no merchandise but merely solicited orders which were submitted to the corporation for approval, was paid by commission, used his own automobile, which he was driving at the time of the collision, and conducted his solicitation according to his own plan, although aided by suggestion or direction from time to time as to points or prospects to be covered, and subject to the general supervision of the corporation.

13. Service of process.

Corporation was in Mississippi doing business day it was served through physician who was sole member of professional

corporation, and this satisfied requirements of § 79-1-27 [repealed], where physician was only member of corporation and service was effected on physician as corporation's agent while he was directly engaged in corporation's business. *Rittenhouse v. Mabry*, 832 F.2d 1380 (5th Cir. 1987), but see, *Gross v. Chevrolet Country*, 655 So. 2d 873 (Miss. 1995).

If foreign corporation is qualified to do business in State of Mississippi, even though it may not be doing any business, its agent for process may be served and courts have personal jurisdiction over that corporation; actually doing business in state has nothing to do with personal jurisdiction where foreign corporation has qualified to do business in state; corporation qualifying to do business in state, under appropriate statutes, becomes like individual as far as suit is concerned. *Read v. Sonat Offshore Drilling, Inc.*, 515 So. 2d 1229 (Miss. 1987).

If foreign corporation is not qualified to do business in state, and is found doing business in state, it may be sued simply by serving process upon any agent of corporation in state, and Mississippi courts then have personal jurisdiction over foreign corporation. *Read v. Sonat Offshore Drilling, Inc.*, 515 So. 2d 1229 (Miss. 1987).

The steps required by the statute to be taken in order to give effectual notice to a foreign corporation of a suit against it are essential to the validity of the process, without which a judgment by default is void. *Cudahy Packing Co. v. Smith*, 191 Miss. 31, 2 So. 2d 347 (1941).

The sending, by registered mail, by the clerk of the court, of a copy of a summons in an action against the Cudahy Packing Co., a Maine corporation, addressed to "The Cudahy Packing Co., Chicago, Ill.," was not effectual notice to the defendant, although the return receipt bore the signature "Cudahy Packing Co., H. Bogers," where it appeared that there were five or six corporations organized and existing under the laws of different states, all named "Cudahy Packing Co.," and that all these corporations had their general business offices in the same building in Chicago, but that each had a different setup for the handling therein of the details of

their respective corporate businesses, and the mailing of the copy of the summons was so addressed and sent as to make it uncertain whether it would be received by the particular defendant, rather than by some other person or corporation. *Cudahy Packing Co. v. Smith*, 191 Miss. 31, 2 So. 2d 347 (1941).

Where a foreign corporation, which made no appearance in circuit court, and suffered a default judgment to be entered against it, appealed to the supreme court, and the record showed that the mailing of a copy of the summons had not complied with the statutory requirement so as to give the circuit court territorial jurisdiction over the corporation, if the circuit court, upon remand of the case, took jurisdiction after the issue of territorial jurisdiction was first presented and determined, the appellant corporation (which by appeal had taken notice of the pendency of the action), might then proceed upon the merits, and on appeal might still insist upon and have a review of the question of territorial jurisdiction. *Cudahy Packing Co. v. Smith*, 191 Miss. 31, 2 So. 2d 347 (1941).

Plea to jurisdiction of consumer's action against foreign corporate manufacturer for injuries allegedly caused by glass in candy made by such manufacturer and purchased from retail merchant held properly sustained, where service was had on corporation's former agent after corporation's withdrawal from state and it did not appear that candy allegedly causing injuries before such withdrawal was in any way connected with business done by manufacturer within the state. *Walters v. Curtis Candy Co.*, 172 Miss. 187, 159 So. 560 (1935).

Foreign corporation, sued for employee's death, by moving to quash process and pleading in abatement, did not waive court's lack of territorial jurisdiction. *Arnett v. Carol C. & Fred R. Smith, Inc.*, 165 Miss. 53, 145 So. 638 (1932).

14. Attachment suits.

In an attachment suit brought in chancery court by an Alabama citizen to recover damages from an Alabama corporation for personal injuries received as a result of a railroad crossing accident in Alabama, and to attach funds in the

hands of a Mississippi corporation, where the defendant corporation owned no property or did no business in Mississippi, service of process upon an employee designated as a superintendent of the defendant corporation but who was employed by another corporation, and received no compensation from defendant corporation, was not effective to confer territorial jurisdiction over the defendant corporation. *Alabama, Tenn. & N.R. Co. v. Howell*, 244 Miss. 157, 141 So. 2d 242 (1962).

Nonresident debtor in attachment suit appearing solely for purpose of objecting, did not, thereby, submit to jurisdiction of court. *Alabama Power Co. v. Jackson*, 181 Miss. 691, 179 So. 571 (1938).

Motion of nonresident national bank, not doing business in state, to quash attachment in suit against it, did not constitute general appearance. *First Nat'l Bank v. Mississippi Cottonseed Prods. Co.*, 171 Miss. 282, 157 So. 349 (1934).

Nonresident national bank's appearance in chancery court suit for purpose of moving to quash attachment, issued against its property in violation of federal statute, did not confer territorial jurisdiction over bank on court, which should have dismissed bill as to bank after quashing attachment. *First Nat'l Bank v. Mississippi Cottonseed Prods. Co.*, 171 Miss. 282, 157 So. 349 (1934).

Nonresident national bank, not doing business in state, did not waive point that chancery court lacked jurisdiction of attachment suit against it by pleading want of territorial jurisdiction. *First Nat'l Bank v. Mississippi Cottonseed Prods. Co.*, 171 Miss. 282, 157 So. 349 (1934).

Foreign railroad corporation with line of railroad within state and property subject to execution and liable to personal judgment held, nevertheless, "nonresident" within attachment statute. *Clark v. Louisville & N.R. Co.*, 158 Miss. 287, 130 So. 302 (1930).

This section [Code 1942, § 5345] does not domesticate foreign corporations doing business in this state nor relieve them of liability to attachment on ground of nonresidence. *Central W. Dev. Co. v. Lewis*, 142 Miss. 428, 107 So. 557 (1926).

B. Former § 79-1-29.

15. In general.

Supplemental record in the supreme court on appeal from a default judgment against a foreign corporation, disclosing that the certificate of the circuit clerk as to service of process on one alleged to be the corporation's resident agent was filed almost five months after adjournment of the trial court at which the default judgment was obtained, was not a sufficient compliance with the statutory requirement of affirmative proof of service of process on a duly appointed resident agent in order to confer jurisdiction upon the trial court. *Superior Oil Co. v. Smith*, 200 Miss. 782, 29 So. 2d 114 (1947).

Default judgment against a foreign corporation was set aside where process was served on one alleged to be the corporation's resident agent for process and a copy was properly forwarded by registered mail to its home office, but there was no proof of the appointment of such resident agent on file in the trial court at the time the case was tried. *Superior Oil Co. v. Smith*, 200 Miss. 782, 29 So. 2d 114 (1947).

This section [Code 1942, § 5346] refers only to foreign corporations found doing business in this state. *Knower v. Baldwin*, 195 Miss. 166, 15 So. 2d 47 (1943).

The steps required by the statute to be taken in order to give effectual notice to a foreign corporation of a suit against it are essential to the validity of the process, without which a judgment by default is void. *Cudahy Packing Co. v. Smith*, 191 Miss. 31, 2 So. 2d 347 (1941).

The purpose of statute providing that, where a corporation does a local business in state without filing its charter and having an agent upon whom process may be served, process may be served on any person found representing corporation at time transaction involved took place, is to give an effectual process so as to bring a corporation into a court where judgment may be rendered, and that statute has no relation to a motion to quash process. *Gridley, Maxon & Co. v. Turner*, 179 Miss. 890, 176 So. 733 (1937), error overruled,

179 Miss. 905, 177 So. 362 (1937), overruled in part, *Mladinich v. Kohn*, 250 Miss. 138, 164 So. 2d 785 (1964).

Statute relating to obtaining jurisdiction of person of foreign corporation by service on agent held not to authorize suit against foreign insurance company in county other than those specified by statute controlling venue of such suits. *Fireman's Fund Ins. Co. v. Cole*, 169 Miss. 634, 152 So. 872 (1934).

Court, by personal service on agent of foreign corporation doing business in this state, acquired jurisdiction of corporation, garnishee in suit by nonresident employee-creditor, and could require answer and condemn any indebtedness due by corporation to its employee-creditor under employment contract made and performable outside state. *Bean v. Bean*, 166 Miss. 434, 147 So. 306 (1933).

Claimant of funds in attachment proceeding has burden of proving failure of proper service on judgment debtor. *Piqua Sav. Bank v. Copiah Hdwe. Co.*, 146 Miss. 581, 111 So. 836 (1927).

This section [Code 1942, § 5346] does not apply to action originating prior to its adoption. *Saxony Mills v. Wagner & Co.*, 94 Miss. 233, 47 So. 899, 136 Am. St. R. 575, 19 Am. Ann. Cas. 199 (1909).

16. Effectiveness of service of process in particular cases.

Where process is personally served on construction superintendent of foreign corporation engaged in building a building in Mississippi, such corporation was properly and legally served with process under § 79-1-29 [repealed]. *Holvitz v. Norfleet-Ashley, Inc.*, 369 F. Supp. 394 (N.D. Miss. 1973).

Service of process on a foreign railroad company's station agent is sufficient without mailing a copy to the home office by registered mail. *Illinois Cent. R.R. v. McDaniel*, 246 Miss. 600, 151 So. 2d 805 (1963).

In an attachment suit brought in chancery court by an Alabama citizen to recover damages from an Alabama corporation for personal injuries received as a result of a railroad crossing accident in Alabama, and to attach funds in the hands of a Mississippi corporation, where the defendant corporation owned no prop-

erty nor did any business in Mississippi, service of process upon an employee designated as a superintendent of the defendant corporation but who was employed by another corporation, and received no compensation from defendant corporation, was not effective to confer territorial jurisdiction over the defendant corporation. *Alabama, Tenn. & N.R. Co. v. Howell*, 244 Miss. 157, 141 So. 2d 242 (1962).

Suit having been filed and process for defendant having been issued promptly by clerk, a suit was pending which tolled running of statute of limitations though process was served on plantation manager of defendant corporation and not on its designated agent for receiving of service of process. *Frederick Smith Enter. Co. v. Lucas*, 204 Miss. 43, 36 So. 2d 812 (1948).

Foreign corporation was not "doing business" in state so as to subject it to suit by service of process on its traveling salesman to recover damages for personal injuries growing out of automobile collision, where such salesman sold no merchandise but merely solicited orders which were submitted to the corporation for approval, was paid by commission, used his own automobile, which he was driving at the time of the collision, and conducted his solicitation according to his own plan, although aided by suggestion or direction from time to time as to points or prospects to be covered, and subject to the general supervision of the corporation. *Knower v. Baldwin*, 195 Miss. 166, 15 So. 2d 47 (1943).

General rule that withdrawal of foreign corporation from state does not revoke local agent's authority to receive service of process or deprive local courts of jurisdiction of actions arising out of business done within the state cannot be extended to actions not incidental to or connected with business done in state by such foreign corporation. *Walters v. Curtis Candy Co.*, 172 Miss. 187, 159 So. 560 (1935).

Where foreign trainmen's brotherhood engaged in insurance business in state had never designated state insurance commissioner as its agent for service of process, service of process on officer of local lodge through whom association dealt in respect to matter in controversy, held sufficient to give court jurisdiction in

suit against association. *Brotherhood of R.R. Trainmen v. Agnew*, 170 Miss. 604, 155 So. 205 (1934).

Judgment debtor was not proper person to serve process on against nonresident in garnishment proceeding based on such judgment. *Hirsch Bros. & Co. v. R.E. Kennington Co.*, 155 Miss. 242, 124 So. 344, 88 A.L.R. 1 (1929).

Jurisdiction of foreign corporation suing in state is not obtained by service of summons on its attorney. *Delta Ins. & Realty Agency v. Fourth Nat'l Bank*, 146 Miss. 11, 111 So. 435 (1927).

Mere soliciting agent of foreign corporation not doing business in state is not an agent on whom process may be served; the statute contemplates agents with general authority and discretion and not mere employees. *Saxony Mills v. Wagner & Co.*, 94 Miss. 233, 47 So. 899, 136 Am. St. R. 575, 19 Am. Ann. Cas. 199 (1909).

17. Defective return of process.

Return on summons "executed personally by delivering to E. M. agent of and for" defendant held insufficient to support decree pro confesso. *National Sur. Co. v. Board of Supvrs.*, 120 Miss. 706, 83 So. 8 (1919).

Service of process held void where return did not show relation of party on whom served to defendant. *Supreme Ruling of Fraternal Mystic Circle v. Sommers*, 108 Miss. 54, 66 So. 322 (1914).

18. Mailing copy of process.

The sending, by registered mail, by the clerk of the court, of a copy of a summons in an action against the *Cudahy Packing Co.*, a Maine corporation, addressed to "The *Cudahy Packing Co.*, Chicago, Ill.," was not effectual notice to the defendant, although the return receipt bore the signature "*Cudahy Packing Co.*, H. Bogers," where it appeared that there were five or six corporations organized and existing under the laws of different states, all named "*Cudahy Packing Co.*," and that all these corporations had their general business offices in the same building in Chicago, but that each had a different setup for the handling therein of the details of their respective corporate businesses, and the mailing of the copy of the summons was so addressed and sent as to make it

uncertain whether it would be received by the particular defendant, rather than by some other person or corporation. *Cudahy Packing Co. v. Smith*, 191 Miss. 31, 2 So. 2d 347 (1941).

Attempted service on agent September 6, 1915, and mailing of summons December 30, 1915, calling for appearance of corporation at rules September 13 did not comply with this section [Code 1942, § 5346]. *Columbia Star Milling Co. v. Brand*, 115 Miss. 625, 76 So. 557 (1917).

Default judgment held erroneous where clerk failed to mail notice as required. *Eminent Household of Columbian Woodmen v. Lundy*, 110 Miss. 881, 71 So. 16 (1916).

19. Appearance of defendant specially as conferring jurisdiction.

Where a foreign corporation, which made no appearance in circuit court, and suffered a default judgment to be entered against it, appealed to the supreme court, and the record showed that the mailing of a copy of the summons had not complied with the statutory requirement so as to give the circuit court territorial jurisdiction over the corporation, if the circuit court, upon remand of the case, took jurisdiction after the issue of territorial jurisdiction was first presented and determined, the appellant corporation might (which by appeal had taken notice of the pendency of the action), then proceed upon the merits, and on appeal might still insist upon and have a review of the question of territorial jurisdiction. *Cudahy Packing Co. v. Smith*, 191 Miss. 31, 2 So. 2d 347 (1941).

Where process on a foreign corporation is invalid or ineffectual, and corporation does not appear in answer to suit, question of jurisdiction of the person may be raised in any appropriate proceeding, but, if corporation files a motion to quash process, corporation is brought into court by appearing for purpose of quashing process, even though process may be insufficient within itself to bring corporation into court, and thereby court is given jurisdiction of the person notwithstanding any defect in process. *Gridley, Maxon & Co. v. Turner*, 179 Miss. 890, 176 So. 733 (1937), error overruled, 179 Miss. 905, 177

So. 362 (1937), overruled in part, *Mladinich v. Kohn*, 250 Miss. 138, 164 So. 2d 785 (1964).

Where nonresident defendant corporation in attachment suit was not brought in by publication of summons, and attempted service of summons on agent was not within county where suit was brought, the appearance of the defendant in state court for the sole purpose of procuring the removal of the cause to the federal court did not constitute such an appearance that, upon remand of the cause, defendant was then in state court without necessity of further process. *McCoy v. Watson*, 153 Miss. 416, 121 So. 116 (1929), error overruled, 154 Miss. 307, 122 So. 368 (1929).

20. Application of section to particular corporations.

But where foreign trainmen's brotherhood, engaged in insurance business in-state, had never designated state insurance commissioner as its agent for service of process, service of process on association may properly be made in same manner as provided for service on foreign corporations doing business in state. *Brotherhood of R.R. Trainmen v. Agnew*, 170 Miss. 604, 155 So. 205 (1934).

This section [Code 1942, § 5346] does not apply to insurance companies who have filed power of attorney with insurance commissioner, *Fidelity & Casualty Co. v. Cross* (1921) 127 Miss 31, 89 So 780; nor to insurance companies appointing agent for service of process. *Great S. Life Ins. Co. v. Gomillion*, 145 Miss. 314, 110 So. 770 (1927).

Railroad doing only interstate business is not denied due process by serving one of its bona fide agents within the state in a cause of action accruing elsewhere. *Vicksburg, S. & P. Ry. v. Forcheimer*, 113 Miss. 531, 74 So. 418 (1917).

C. Former § 79-3-229.

21. In general.

If foreign corporation is qualified to do business in State of Mississippi, even though it may not be doing any business, its agent for process may be served and courts have personal jurisdiction over that corporation; actually doing business in state has nothing to do with personal

jurisdiction where foreign corporation has qualified to do business in state; corporation qualifying to do business in state, under appropriate statutes, becomes like individual as far as suit is concerned. *Read v. Sonat Offshore Drilling, Inc.*, 515 So. 2d 1229 (Miss. 1987).

In a diversity action a federal district court in Mississippi would have jurisdiction over a nonresident car manufacturer pursuant to Miss Code § 79-3-229 in a suit by a nonresident plaintiff pleading a cause of action which arose entirely out-of-state, where the manufacturer was expressly authorized to do business in Mississippi, was actually doing business, and had designated a resident agent upon whom process was served pursuant to § 79-3-229. *Cowan v. Ford Motor Co.*, 694 F.2d 104 (5th Cir. 1982), on reh'g, 713 F.2d 100 (5th Cir. 1983), certified question answered, 437 So. 2d 46 (Miss. 1983), answer to certified question conformed to, 719 F.2d 785 (5th Cir. 1983).

A foreign credit corporation which has an agent in Mississippi for the purpose of calling upon prospective sellers of title retention notes to solicit and induce them to submit the collateral notes taken from their customers to the office of the credit corporation in Memphis, Tennessee, furnished an automobile to its agent for use in calling on manufacturers and dealers in Mississippi, and offered its services to dealers to collect delinquent money due on notes, or to recover the possession of property described in the notes, was not engaged in doing business in Mississippi within the purview of this section [Code 1942, § 5309-230]. *Ross Constr. Co. v. U.M. & M. Credit Corp.*, 214 So. 2d 822 (Miss. 1968).

Service of process on a foreign corporation's statutory agent does not confer jurisdiction of an action by a nonresident or a cause of action accruing in another state. *Stavang v. American Potash & Chem. Corp.*, 227 F. Supp. 786 (S.D. Miss. 1964), aff'd, 344 F.2d 117 (5th Cir. 1965).

A foreign corporation which has never qualified to do business in Mississippi is not precluded from suing there on a policy of liability insurance issued to it in another state, in respect of judgment recovered against it in Mississippi after its

withdrawal from the state for negligence in the performance of services there. *Aerial Agric. Serv. of Mont., Inc. v. Till*, 207 F. Supp. 50 (N.D. Miss. 1962).

All foreign corporations doing business in this state shall be subject to suit here to same extent that corporations of state are, whether cause of action accrued here or not, and this statute indicates general policy of equality and similarity of treatment as between foreign and domestic corporations. *Poole v. Mississippi Publishers Corp.*, 208 Miss. 364, 44 So. 2d 467 (1950).

Rule to effect that citizen of one state may be enjoined from prosecuting action against another citizen of same state applies equally when injunction is sought to restrain citizen of one state from prosecuting action against nonresident corporation doing business with lawful authority in such state. *Poole v. Mississippi Publishers Corp.*, 208 Miss. 364, 44 So. 2d 467 (1950).

Actions against Louisiana corporation brought in the federal district court for the southern district of Mississippi was proper where such corporation had appointed an agent for the service of process in accordance with this section [Code 1942, § 5319], such appointment being a consent by the corporation to be sued in the state, which waives the right to be sued only in the district of which it is an inhabitant, irrespective of the basis of federal jurisdiction. *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees, Div. 1127 v. Southern Bus Lines*, 172 F.2d 946 (5th Cir. 1949).

Maintenance by a foreign newspaper corporation of a news gathering office in the state, the employment of a resident contact man to recommend suitable persons to become local distributors in the

state, and a contract with a truck operator to transport its papers into the state for sale and distribution by local distributor, did not constitute "doing business" in the state so as to make such corporation amenable to service of process in the state. *Lee v. Memphis Pub. Co.*, 195 Miss. 264, 14 So. 2d 351, 152 A.L.R. 1428 (1943).

A foreign corporation operating a motor transportation line for the conveyance of passengers through a county of this state, and having a resident agent for the service of process in this state, could be sued in such county by a passenger, seeking to recover damages for personal injury sustained notwithstanding that the cause of action arose in Louisiana and the plaintiff was a temporary resident of this state. *Tri-State Transit Co. v. Mondy*, 194 Miss. 714, 12 So. 2d 920 (1943).

General rule that withdrawal of foreign corporation from state does not revoke local agent's authority to receive service of process or deprive local courts of jurisdiction of actions arising out of business done within the state cannot be extended to actions not incidental to or connected with business done in state by such foreign corporation. *Walters v. Curtis Candy Co.*, 172 Miss. 187, 159 So. 560 (1935).

Plea to jurisdiction of consumer's action against foreign corporate manufacturer for injuries allegedly caused by glass in candy made by such manufacturer and purchased from retail merchant held properly sustained, where service was had on corporation's former agent after corporation's withdrawal from state and it did not appear that candy allegedly causing injuries before such withdrawal was in any way connected with business done by manufacturer within the state. *Walters v. Curtis Candy Co.*, 172 Miss. 187, 159 So. 560 (1935).

RESEARCH REFERENCES

ALR. Foreign corporation's purchase within state of goods to be shipped into other state or country as doing business within state for purposes of jurisdiction or service of process. 12 A.L.R.2d 1439.

Federal or state law as controlling, in

diversity action, whether foreign corporation is amenable to service of process in state. 6 A.L.R.3d 1103.

Attorney representing foreign corporation in litigation as its agent for service of process in unconnected actions or proceed-

ings. 9 A.L.R.3d 738.

Who is “general” or “managing” agent of foreign corporation under statute authorizing service of process on such agent. 17 A.L.R.3d 625.

Products liability: In personam jurisdiction over nonresident manufacturer or seller under “long-arm” statutes. 19 A.L.R.3d 13.

Applicability, to actions not based on products liability, of state statutes or rules of court predicated in personam jurisdiction over foreign manufacturers and distributors upon use of their goods within state. 20 A.L.R.3d 957.

Construction and application of state statutes or rules of court predicated in personam jurisdiction over nonresidents or foreign corporations on making or performing a contract within the state. 23 A.L.R.3d 551.

Construction and application of state statutes or rules of court predicated in

personam jurisdiction over nonresidents or foreign corporations on the commission of a tort within the state. 24 A.L.R.3d 532.

Application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute as affected by compliance after commencement of action. 23 A.L.R.5th 744.

Validity, construction, and application of “fiduciary shield” doctrine — modern cases. 79 A.L.R.5th 587.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 228-230, 471, 493 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Forms 11 et seq.

CJS. 20 C.J.S., Corporations §§ 1815, 1937 et seq.

Lawyers’ Edition. State regulation of judicial proceedings as violating commerce clause (Art I, 8, cl 3) of Federal Constitution — Supreme Court cases. 100 L. Ed. 2d 1049.

SUBARTICLE B.

WITHDRAWAL.

SEC.

79-4-15.20. Withdrawal of foreign corporations.

§ 79-4-15.20. Withdrawal of foreign corporations.

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (3); and

(5) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth in its application for withdrawal.

SOURCES: Laws, 2005, ch. 502, § 2 eff from and after approval (April 20, 2005).

Editor's Note — A former § 79-4-15.20 [Laws, 1987, ch. 486, § 15.20, eff from and after January 1, 1988; Repealed by Laws, 2004, ch. 495, § 12, eff from and after July 1, 2004] also provided for the withdrawal of foreign corporations.

Cross References — Withdrawal of foreign corporation under Mississippi Nonprofit Corporation Act, see § 79-11-383.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-237.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-237.

11. In general.

It would appear that this section [Code 1942, § 5309-234] was enacted to prevent a corporation from withdrawing from the State of Mississippi after a citizen of this state acquires a right to sue the corporation, and that jurisdiction conferred upon a foreign corporation through the provisions of this section is predicated upon the fact that the cause of action accrued during the time that the corporation was qualified to do business within the State of Mississippi, regardless of the origin or genesis of the acts which gave rise to the cause of action, that is, whether or not they accrued or had their effect within or without the State of Mississippi. *Hyde Constr. Co. v. Koehring Co.*, 321 F. Supp. 1193 (S.D. Miss. 1969).

Where successor corporation agreed to assume the liabilities and obligations of

the predecessor corporation which were due from the state, the successor corporation was liable for municipal privilege taxes in view of the statute providing for withdrawal of foreign corporation from the state and also in view of statute providing that a tax is a debt due by corporation and may be recovered by action. *General Contract Corp. v. Bailey*, 218 Miss. 484, 67 So. 2d 485 (1953).

General rule that withdrawal of foreign corporation from state does not revoke local agent's authority to receive service of process or deprive local courts of jurisdiction of actions arising out of business done within the state cannot be extended to actions not incidental to or connected with business done in state by such foreign corporation. *Walters v. Curtis Candy Co.*, 172 Miss. 187, 159 So. 560 (1935).

Plea to jurisdiction of consumer's action against foreign corporate manufacturer for injuries allegedly caused by glass in candy made by such manufacturer and purchased from retail merchant held properly sustained, where service was had on corporation's former agent after corporation's withdrawal from state and it did not appear that candy allegedly causing injuries was in any way connected with the business done by manufacturer within the state. *Walters v. Curtis Candy Co.*, 172 Miss. 187, 159 So. 560 (1935).

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 278-280, 474-478.

8A Am. Jur. Legal Forms 2d, Foreign Corporations §§ 122:45-122:47, 122:51.

SUBARTICLE C.

REVOCATION OF CERTIFICATE OF AUTHORITY.

SEC.

- 79-4-15.30. Grounds for revocation.
79-4-15.31. Procedure for and effect of revocation.
79-4-15.32. Appeal from revocation.
79-4-15.33. Appeal from denial of reinstatement.

§ 79-4-15.30. Grounds for revocation.

The Secretary of State may commence a proceeding under Section 79-4-15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(2) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;

(3) The foreign corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(4) The foreign corporation does not inform the Secretary of State under Section 79-4-15.08 or 79-4-15.09 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation or discontinuance;

(5) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

SOURCES: Laws, 1987, ch. 486, § 15.30, eff from and after January 1, 1988.

Cross References — Procedures for and effect of revocation of foreign corporation's certificate of authority, see § 79-4-15.31.

Administrative revocation, under this section and §§ 79-4-15.31 and 79-4-15.32, of foreign professional corporations certificate of authority, see § 79-10-95.

Revocation of certificate of authority under Mississippi Nonprofit Corporation Act, see §§ 79-11-385 through 79-11-389.

JUDICIAL DECISIONS

I. Under Current Law.

II. Under Former § 79-3-241.

1.-10. [Reserved for future use.]

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-241.

11. In general.

A foreign corporation, whose certificate of authority to do business within the

State was suspended after it filed a breach of lease action, was not required to become reinstated as a condition for proceeding to trial. *Capital Assocs. v. Sally Southland, Inc.*, 529 So. 2d 640 (Miss. 1988).

RESEARCH REFERENCES

ALR. Foreign corporation's leasing of personal property as doing business within statutes prescribing conditions of right to do business. 50 A.L.R.3d 1020.

State regulation of land ownership by alien corporation. 21 A.L.R.4th 1329.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 189, 190, 415-418.

CJS. 20 C.J.S., Corporations §§ 1810, 1843.

Law Reviews. An analysis of Mississippi's treatment of foreign corporations. 55 Miss L. J. 259, June, 1985.

§ 79-4-15.31. Procedure for and effect of revocation.

(a) If the Secretary of State determines that one or more grounds exist under Section 79-4-15.30 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under Section 79-4-15.10, except that such determination may be served by first class mail.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after service of the notice is perfected under Section 79-4-15.10, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 79-4-15.10, except that such certificate may be served by first class mail.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

SOURCES: Laws, 1987, ch. 486, § 15.31; Laws, 1991, ch. 509, § 3, eff from and after July 1, 1991.

Cross References — Service of process, notice or demand on foreign corporation which has had its certificate of authority revoked under this section, see § 79-4-15.10.

Authority and grounds for Secretary of State to commence proceeding under § 79-4-15.31 to revoke certificate of authority of foreign corporation, see § 79-4-15.30.

Appeal from revocation, see § 79-4-15.32.

Administrative revocation, under this section and §§ 79-4-15.30 and 79-4-15.32, of foreign professional corporation's certificate of authority, see § 79-10-95.

Revocation of certificate of authority under Mississippi Nonprofit Corporation Act, see §§ 79-11-385 through 79-11-389.

RESEARCH REFERENCES

ALR. Foreign corporation's leasing of personal property as doing business within statutes prescribing conditions of right to business. 50 A.L.R.3d 1020.

State regulation of land ownership by alien corporation. 21 A.L.R.4th 1329.

Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 A.L.R.4th 392.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 189, 190, 413 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Forms 31, 32.

8 Am. Jur. Legal Forms 2d, Foreign Corporations §§ 122:52.

CJS. 20 C.J.S., Corporations §§ 1843-1867.

Law Reviews. An analysis of Mississippi's treatment of foreign corporations. 55 Miss L. J. 259, June, 1985.

§ 79-4-15.32. Appeal from revocation.

(a) A foreign corporation whose certificate of authority is administratively revoked under Section 79-4-15.31 may apply to the Secretary of State for reinstatement at any time after the effective date of such revocation. The application must:

(1) Recite the name of the corporation and the effective date of the administrative revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated;

(3) State that the corporation's name satisfies the requirements of Section 79-4-4.01; and

(4) Contain a certificate from the Mississippi State Tax Commission reciting that the corporation has properly filed all reports and paid all taxes and penalties required by revenue laws of this state.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) and that the information is correct, he shall reinstate the certificate of authority, prepare a certificate that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under Section 79-4-5.04.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

SOURCES: Laws, 1987, ch. 486, § 15.32; Laws, 1991, ch. 509, § 4; Laws, 1993, ch. 368, § 14; Laws, 2009, ch. 527, § 3; Laws, 2009, ch. 530, § 4, eff from and after July 1, 2009.

Joint Legislative Committee Note — Section 3 of ch. 527, Laws of 2009, effective from and after July 1, 2009 (approved April 13, 2009), amended this section. Section 4 of ch. 530, Laws of 2009, effective from and after July 1, 2009 (approved April 14, 2009), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 527, Laws of 2009, which contains language that specifically provides that it supersedes § 79-4-15.32 as amended by Chapter 530, Laws of 2009.

Editor's Note — Effective July 1, 2010, Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Amendment Notes — The first 2009 amendment (ch. 527) substituted "at any time" for "within five (5) years" in the first sentence of the introductory language of (a).

The second 2009 amendment (ch. 530) substituted "at any time" for "within five (5) years" in the first sentence of the introductory language of (a).

Cross References — Administrative revocation, under this section and §§ 79-4-15.30 and 79-4-15.32, of foreign professional corporation's certificate of authority, see § 79-10-95.

Revocation of certificate of authority under Mississippi Nonprofit Corporation Act, see §§ 79-11-385 through 79-11-389.

RESEARCH REFERENCES

ALR. Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 A.L.R.4th 392.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 189, 190, 416.

8 Am. Jur. Legal Forms 2d, Foreign Corporations §§ 122:74, 122:75.

§ 79-4-15.33. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a foreign corporation's application for reinstatement following administrative revocation, he shall serve the corporation under Section 79-4-5.04, Mississippi Code of 1972, with a written communication that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the Chancery Court of the First Judicial District of Hinds County or the chancery court of the county where the corporation is domiciled within thirty (30) days after service of the communication of denial is perfected. The corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's communication of denial.

(c) The court may summarily order the Secretary of State to reinstate the revoked corporation or may take other action the court considers appropriate.

(d) The court’s final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1991, ch. 509, § 5; Laws, 2009, ch. 527, § 4, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment inserted “or the chancery court of the county where the corporation is domiciled” in (b).

Cross References — Revocation of certificate of authority under Mississippi Nonprofit Corporation Act, see §§ 79-11-385 through 79-11-389.

ARTICLE 16.

RECORDS AND REPORTS.

Subarticle A. Records.....79-4-16.01
Subarticle B. Reports.....79-4-16.20

SUBARTICLE A.

RECORDS.

SEC.
79-4-16.01. Corporate records.
79-4-16.02. Inspection of records by shareholders.
79-4-16.03. Scope of inspection right.
79-4-16.04. Court-ordered inspection.
79-4-16.05. Inspection of records by director.
79-4-16.06. Exception to notice requirement.

§ 79-4-16.01. Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

- (1) Its articles or restated articles of incorporation, all amendments to them currently in effect and any notices to shareholders referred to in Section 79-4-1.20(k)(5) regarding facts on which a filed document is dependent;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(5) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under Section 79-4-16.02;

(6) A list of the names and business addresses of its current directors and officers; and

(7) Its most recent annual report delivered to the Secretary of State under Section 79-4-16.22.

SOURCES: Laws, 1987, ch. 486, § 1601; Laws, 2004, ch. 495, § 13, eff from and after July 1, 2004.

Cross References — Shareholder's right to inspect and copy any corporate records required to be kept by this section, see § 79-4-16.02.

RESEARCH REFERENCES

ALR. Persons liable under statutes imposing, upon directors, officers, or trustees of a corporation, personal liability for its debts on account of their failure to file or publish reports, required by law, as to corporate matters. 39 A.L.R.3d 428.

Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence. 48 A.L.R.3d 1072.

What corporate documents are subject to shareholder's right to inspection. 88 A.L.R.3d 663.

Availability of sole shareholder's Fifth Amendment privilege against self-incrim-

ination to resist production of corporation's books and records — modern status. 87 A.L.R. Fed. 177.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 278 et seq.

4 Am. Jur. Proof of Facts 2d 425, Reasonableness of Corporate Officer's Compensation.

CJS. 18 C.J.S., Corporations § 253.

Law Reviews. Holmes, The revised Model Business Corporation Act and corporate law reform in Mississippi. 57 Miss L. J. 271, August, 1987.

§ 79-4-16.02. Inspection of records by shareholders.

(a) Subject to Section 79-4-16.03(c), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Section 79-4-16.01(e) if he gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy.

(b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his

demand at least five (5) business days before the date on which he wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(c) A shareholder may inspect and copy the records identified in subsection (b) only if:

(1) His demand is made in good faith and for a proper purpose;

(2) He describes with reasonable particularity his purpose and the records he desires to inspect; and

(3) The records are directly connected with his purpose.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(1) The right of a shareholder to inspect records under Section 79-4-7.20 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

(2) The power of a court, independently of Section 79-4-1.01 et seq., to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

SOURCES: Laws, 1987, ch. 486, § 16.02; Laws, 1988, ch. 369, § 6, eff from and after passage (approved April 18, 1988).

Cross References — Authority for shareholder, his agent or attorney to inspect and, subject to requirements of § 79-4-16.02, copy shareholders' list, see § 79-4-7.20.

Scope of shareholder's right to copy records under § 79-4-16.02, see § 79-4-16.03.

Court-ordered inspection in copying of records at corporation's expense when corporation does not allow shareholder to inspect and copy records under § 79-4-16.02, see § 79-4-16.04.

JUDICIAL DECISIONS

1. In general.

Attorney is not entitled to damages against professional association because of its failure to allow him access to corpo-

rate records, where he failed to specifically plead this item of special damages. *Fuselier, Ott & McKee, P.A. v. Moeller*, 507 So. 2d 63 (Miss. 1987).

RESEARCH REFERENCES

ALR. Purposes for which stockholder or officer may exercise right to examine corporate books and records. 15 A.L.R.2d 11.

Stockholder's right to inspect books and records of foreign corporation. 19 A.L.R.3d 869.

Who has possession, custody or control of corporate books or records for purposes of order to produce. 47 A.L.R.3d 676.

Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence. 48 A.L.R.3d 1072.

Right of stockholder to inspect corporate books or records in pursuit of social or political interest, as distinguished from financial interest. 50 A.L.R.3d 1056.

What corporate documents are subject to shareholder's right to inspection. 88 A.L.R.3d 663.

Availability of sole shareholder's Fifth Amendment privilege against self-incrim-

ination to resist production of corporation's books and records — modern status. 87 A.L.R. Fed. 177.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 285 et seq.

6 Am. Jur. Legal Forms 2d, Corporations § 74:994.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 239 et seq.

4 Am. Jur. Proof of Facts 2d 425, Reasonableness of Corporate Officer's Compensation.

CJS. 18 C.J.S., Corporations §§ 590-600.

§ 79-4-16.03. Scope of inspection right.

(a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

(b) The right to copy records under Section 79-4-16.02 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under Section 79-4-16.02(b)(3) by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

SOURCES: Laws, 1987, ch. 486, § 16.03; Laws, 2001, ch. 435, § 20, eff from and after July 1, 2001.

Cross References — Shareholder's right to inspect and copy any corporate records required to be kept by § 79-4-16.01(e), see § 79-4-16.02.

RESEARCH REFERENCES

ALR. Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence. 48 A.L.R.3d 1072.

What corporate documents are subject to shareholder's right to inspection. 88 A.L.R.3d 663.

Availability of sole shareholder's Fifth Amendment privilege against self-incrimination to resist production of corporation's books and records — modern status. 87 A.L.R. Fed. 177.

§ 79-4-16.04. Court-ordered inspection.

(a) If a corporation does not allow a shareholder who complies with Section 79-4-16.02(a) to inspect and copy any records required by that subsection to be available for inspection, the chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with Section 79-4-16.02(b) and (c) may apply to the chancery court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

SOURCES: Laws, 1987, ch. 486, § 16.04, eff from and after January 1, 1988.

RESEARCH REFERENCES

ALR. Who has possession, custody, or control of corporate books or records for purposes of order to produce. 47 A.L.R.3d 676.

Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence. 48 A.L.R.3d 1072.

What corporate documents are subject to shareholder's right to inspection. 88 A.L.R.3d 663.

Attorneys' fees; cost of services provided by paralegals or the like as compensable

element of award in state court. 73 A.L.R.4th 938.

Availability of sole shareholder's Fifth Amendment privilege against self-incrimination to resist production of corporation's books and records — modern status. 87 A.L.R. Fed. 177.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 339 et seq.

CJS. 18 C.J.S., Corporations § 600.

§ 79-4-16.05. Inspection of records by director.

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The chancery court of the county where the corporation's principal office (or if none in the state, its registered office) is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs (including reasonable counsel fees) incurred in connection with the application.

SOURCES: Laws, 2001, ch. 435, § 21, eff from and after July 1, 2001.

§ 79-4-16.06. Exception to notice requirement.

(a) Whenever notice is required to be given under any provision of this act to any shareholder, such notice shall not be required to be given if:

(1) Notice of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable; or

(2) All, but not less than two (2), payments or dividends on securities during a twelve-month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then current address, the requirement that notice be given to such shareholder shall be reinstated.

SOURCES: Laws, 2001, ch. 435, § 22, eff from and after July 1, 2001.

SUBARTICLE B.

REPORTS.

SEC.

79-4-16.20. Financial statements for shareholders.

79-4-16.21. Other reports to shareholders.

79-4-16.22. Annual report to secretary of state.

§ 79-4-16.20. Financial statements for shareholders.

(a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation

and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(1) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall deliver the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. Thereafter, on written request from a shareholder to whom the statements were not delivered, the corporation shall mail him the latest financial statements.

SOURCES: Laws, 1987, ch. 486, § 16.20; Laws, 2004, ch. 495, § 14, eff from and after July 1, 2004.

Cross References — Requirement that corporation keep copy of all financial statements furnished to shareholders under this section for past 3 years at its principal office, see § 79-4-16.01.

RESEARCH REFERENCES

ALR. Persons liable under statutes imposing, upon directors, officers, or trustees of a corporation, personal liability for its debts on account of their failure to file or publish reports, required by law, as to corporate matters. 39 A.L.R.3d 428.

Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence. 48 A.L.R.3d 1072.

What corporate documents are subject to shareholder's right to inspection. 88 A.L.R.3d 663.

Liability of independent accountant to

investors or shareholders. 48 A.L.R.5th 389.

Availability of sole shareholder's Fifth Amendment privilege against self-incrimination to resist production of corporation's books and records — modern status. 87 A.L.R. Fed. 177.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 284, 330.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:991-74:993.

CJS. 18 C.J.S., Corporations §§ 588-601.

§ 79-4-16.21. Other reports to shareholders.

(a) If a corporation indemnifies or advances expenses to a director under Section 79-4-8.51, 79-4-8.52, 79-4-8.53 or 79-4-8.54 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

SOURCES: Laws, 1987, ch. 486, § 16.21; brought forward, 1996, ch. 459, § 13, eff from and after January 1, 1997.

RESEARCH REFERENCES

ALR. Persons liable under statutes imposing, upon directors, officers, or trustees of a corporation, personal liability for its debts on account of their failure to file or publish reports, required by law, as to corporate matters. 39 A.L.R.3d 428.

Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence. 48 A.L.R.3d 1072.

What corporate documents are subject to shareholder's right to inspection. 88 A.L.R.3d 663.

Liability of independent accountant to investors or shareholders. 48 A.L.R.5th 389.

Availability of sole shareholder's Fifth Amendment privilege against self-incrimination to resist production of corporation's books and records — modern status. 87 A.L.R. Fed. 177.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 278-284, 327-334.

6 Am. Jur. Legal Forms 2d, Corporations § 74:993.

CJS. 18 C.J.S., Corporations § 595.

§ 79-4-16.22. Annual report to secretary of state.

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver within sixty (60) days of each anniversary date of its incorporation with respect to a domestic corporation or its authorization to transact business in this state with respect to a foreign corporation, or such other date as may be established by the Secretary of State [see Editor's Note below], to the Secretary of State for filing an annual report that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The address of its registered office and the name of its registered agent at that office in this state;

(3) The address of its principal office;

(4) The names and business addresses of its directors and principal officers;

(5) A brief description of the nature of its business;

(6) The total number of authorized shares, itemized by class and series, if any, within each class; and

(7) The total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) If an annual report does not contain the information required by this section, the Secretary of State shall notify promptly the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

SOURCES: Laws, 1987, ch. 486, § 16.22; Laws, 1992, ch. 361, § 1, eff from and after July 1, 1993.

Editor's Note — Former section 79-4-16.22 provided for delivery of annual reports to the Secretary of State between January 1 and April 1 of the following calendar years.

Laws of 1992, ch. 361, § 1, effective July 1, 1993, provides that every domestic corporation, and every foreign corporation authorized to transact business in this state shall deliver an annual report to the Secretary of State within sixty (60) days of the date of the anniversary date of its incorporation if it is a domestic corporation or its authorization to transact business in this state if it is a foreign corporation, or on such other date as may be established by the Secretary of State.

The Secretary of State has determined that the 1997 annual reports shall continue to be delivered to the Secretary of State between January 1 and April 1, 1997.

Cross References — Requirement that most recent annual report required by this section have been delivered to Secretary of State in order for certificate of existence or authorization to be issued, see § 79-4-1.28.

Corporation's failure to deliver its annual report to Secretary of State as grounds for administrative dissolution, see § 79-4-14.20.

Requirement that corporation keep copy of its most recent annual report delivered to Secretary of State under this section at its principal office, see § 79-4-16.01.

Annual report required by this section to include statement that all shareholders are qualified persons with respect to corporation or if foreign professional corporation, that all shareholders meet § 79-10-91(2)(c) requirement, see § 79-10-101.

RESEARCH REFERENCES

ALR. Persons liable under statutes imposing, upon directors, officers, or trustees of a corporation, personal liability for its debts on account of their failure to file or publish reports, required by law, as to corporate matters. 39 A.L.R.3d 428.

Right of stockholder to have corporate books inspected by attorney, accountant, or other agent without stockholder's presence. 48 A.L.R.3d 1072.

What corporate documents are subject to shareholder's right to inspection. 88 A.L.R.3d 663.

Availability of sole shareholder's Fifth Amendment privilege against self-incrimination to resist production of corporation's books and records — modern status. 87 A.L.R. Fed. 177.

Am Jur. 18A Am. Jur. 2d, Corporations § 284.

18B Am. Jur. 2d, Corporations §§ 1612-1617.

19 Am. Jur. 2d, Corporations § 2393.

ARTICLE 17.

TRANSITION PROVISIONS.

SEC.

- 79-4-17.01. Application to existing domestic corporation.
- 79-4-17.02. Application to qualified foreign corporations.
- 79-4-17.03. Saving provisions.
- 79-4-17.04. Severability.

§ 79-4-17.01. Application to existing domestic corporation.

Section 79-4-1.01 et seq. applies to all domestic corporations in existence on its effective date that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

SOURCES: Laws, 1987, ch. 486, § 17.01, eff from and after January 1, 1988.

RESEARCH REFERENCES

Law Reviews. Holmes, The revised corporate law reform in Mississippi. 57 Miss. Model Business Corporation Act and cor- L. J. 271, August, 1987.

§ 79-4-17.02. Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on the effective date of Sections 79-4-1.01 et seq. is subject to Sections 79-4-1.01 et seq. but is not required to obtain a new certificate of authority to transact business under Sections 79-4-1.01 et seq.

SOURCES: Laws, 1987, ch. 486, § 17.02, eff from and after January 1, 1988.

§ 79-4-17.03. Saving provisions.

(a) Except as provided in subsection (b), the repeal of a statute by Sections 79-4-1.01 et seq. does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;
- (3) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal;
- (4) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by Sections 79-4-1.01 et seq. is reduced by Sections 79-4-1.01 et seq., the

penalty or punishment if not already imposed shall be imposed in accordance with Sections 79-4-1.01 et seq.

SOURCES: Laws, 1987, ch. 486, § 17.03, eff from and after January 1, 1988.

§ 79-4-17.04. Severability.

If any provision of Sections 79-4-1.01 et seq. or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of Sections 79-4-1.01 et seq. that can be given effect without the invalid provision or application, and to this end the provisions of Sections 79-4-1.01 et seq. are severable.

SOURCES: Laws, 1987, ch. 486, § 17.04, eff from and after January 1, 1988.

CHAPTER 5

Business Development Corporations [Repealed]

§§ 79-5-1 through 79-5-37. Repealed.

Repealed by Laws, 2006, ch. 377, § 1 effective from and after July 1, 2006.

§ 79-5-1. [Codes, 1942, § 5390-01; Laws, 1960, ch. 186, § 1, eff from and after passage (approved March 23, 1960).]

§ 79-5-3. [Codes, 1942, § 5390-02; Laws, 1960, ch. 186, § 2, eff from and after passage (approved March 23, 1960).]

§ 79-5-5. [Codes, 1942, § 5390-03; Laws, 1960, ch. 186, § 3, eff from and after passage (approved March 23, 1960).]

§ 79-5-7. [Codes, 1942, § 5390-04; Laws, 1960, ch. 186, § 4, eff from and after passage (approved March 23, 1960).]

§ 79-5-9. [Codes, 1942, § 5390-05; Laws, 1960, ch. 186, § 5, eff from and after passage (approved March 23, 1960).]

§ 79-5-11. [Codes, 1942, § 5390-06; Laws, 1960, ch. 186, § 6; Laws, 1968, ch. 278, § 1, eff from and after passage (approved August 7, 1968).]

§ 79-5-13. [Codes, 1942, § 5390-07; Laws, 1960, ch. 186, § 7, eff from and after passage (approved March 23, 1960).]

§ 79-5-15. [Codes, 1942, § 5390-08; Laws, 1960, ch. 186, § 8, eff from and after passage (approved March 23, 1960).]

§ 79-5-17. [Codes, 1942, § 5390-09; Laws, 1960, ch. 186, § 9, eff from and after passage (approved March 23, 1960).]

§ 79-5-19. [Codes, 1942, § 5390-10; Laws, 1960, ch. 186, § 10; Laws, 1970, ch. 312, § 1, eff from and after passage (approved February 19, 1970).]

§ 79-5-21. [Codes, 1942, § 5390-11; Laws, 1960, ch. 186, § 11, eff from and after passage (approved March 23, 1960).]

§ 79-5-23. [Codes, 1942, § 5390-12; Laws, 1960, ch. 186, § 12, eff from and after passage (approved March 23, 1960).]

§ 79-5-25. [Codes, 1942, § 5390-13; Laws, 1960, ch. 186, § 13, eff from and after passage (approved March 23, 1960).]

§ 79-5-27. [Codes, 1942, § 5390-14; Laws, 1960, ch. 186, § 14, eff from and after passage (approved March 23, 1960).]

§ 79-5-29. [Codes, 1942, § 5390-15; Laws, 1960, ch. 186, § 15; Laws, 1968, ch. 279, § 1, eff from and after passage (approved July 10, 1968).]

§ 79-5-31. [Codes, 1942, § 5390-16; Laws, 1960, ch. 186, § 16, eff from and after passage (approved March 23, 1960).]

§ 79-5-33. [Codes, 1942, § 5390-17; Laws, 1960, ch. 186, § 17; Laws, 1968, ch. 279, § 2, eff from and after passage (approved July 10, 1968).]

§ 79-5-35. [Codes, 1942, § 5390-18; Laws, 1960, ch. 186, § 18; Laws, 1969, Ex Sess, ch. 26, § 1, eff from and after passage (approved September 8, 1969).]

§ 79-5-37. [Codes, 1942, § 5390-19; Laws, 1960, ch. 186, § 19, eff from and after passage (approved March 23, 1960).]

Editor's Note — Former § 79-5-1 was entitled "Short Title."

Former § 79-5-3 was entitled "Definitions."

Former § 79-5-5 was entitled "Incorporation; commencement of operations."

Former § 79-5-7 was entitled "Purposes."

Former § 79-5-9 was entitled "Powers."

Former § 79-5-11 was entitled "Charter of incorporation; capital stock."

Former § 79-5-13 was entitled "Authority conferred on existing and future corporations; who may deal in bonds and securities of corporation."

Former § 79-5-15 was entitled "Financial institutions may become members; loans to corporations; limits; evidences of indebtedness; interest."

Former § 79-5-17 was entitled "Duration of membership; withdrawal; calls for loans subsequent to withdrawal."

Former § 79-5-19 was entitled "Management and control of corporation; board of directors; board of members; executive committee; elections, terms and qualifications; liability for losses."

Former § 79-5-21 was entitled "Powers of stockholders; voting and meetings of stockholders and members; number of votes; dissolution."

Former § 79-5-23 was entitled "Amendment of charter; approval and filing of amendments."

Former § 79-5-25 was entitled "Earned surplus."

Former § 79-5-27 was entitled "Designation of depository; corporation may not receive deposits."

Former § 79-5-29 was entitled "Audits; reports."

Former § 79-5-31 was entitled "First meeting of corporation; notice; minutes; business that may be transacted; quorum."

Former § 79-5-33 was entitled "Securities of corporation subject to Mississippi Securities Law; sale of securities of previously chartered corporations regulated; legal investments."

Former § 79-5-35 was entitled "Effect of failure to begin business."

Former § 79-5-37 was entitled "Credit of state."

CHAPTER 6

Foreign Limited Liability Companies [Repealed]

§§ 79-6-1 through 79-6-39. Repealed.

Repealed by Laws, 1994, ch. 402, § 88, eff from and after July 1, 1994.
[Laws, 1993, ch. 530, § 1]

Editor's Note — Former Chapter 6 related to the registration of foreign limited liability companies. For provisions of the Mississippi Limited Liability Company Act, see §§ 79-29-101. For the provisions governing foreign limited liability companies, see §§ 79-29-1001, et seq.

CHAPTER 7

Small Business Investment Companies

SEC.

- 79-7-1. Incorporation.
- 79-7-3. Powers.
- 79-7-5. Notes, etc., exempted from ad valorem taxes.
- 79-7-7. Fees and charges for loans.

§ 79-7-1. Incorporation.

Small business investment companies organized under the provisions of the Small Business Investment Act of 1958, Public Law 699, 85th Congress, may be incorporated in this state under the provisions of Chapter 3, Title 79, Mississippi Code of 1972, Sections 79-3-1 through 79-3-293; except that the charter of any such corporation may include a statement of such powers and limitations as is acceptable to the Small Business Administration and not contrary to law and need not include a statement that the rights and powers that may be exercised by said corporation in addition thereto are those conferred by said chapter 3, title 79, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5359-51; Laws, 1960, ch. 183, § 1, eff from and after passage (approved April 30, 1960).

Editor's Note — Sections 79-3-1 through 79-3-293 referred to in this section were repealed by Laws of 1987, ch. 486, § 17.06, eff from and after January 1, 1988. For similar provisions, see §§ 79-4-1.01 et seq.

Cross References — Regulation of transfer of investment securities under the Uniform Commercial Code, see §§ 75-8-101 et seq.

Federal Aspects — Small Business Investment Act of 1958, P.L. 85-699, appears generally as 15 USCS §§ 681 et seq.

RESEARCH REFERENCES

ALR. What is an "investment company" under § 3 of Investment Company Act of 1940 (15 USCS § 80a-3). 64 A.L.R. Fed. 337.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 156 et seq.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:391 et seq., 74:1254, 74:1255.

10A Am. Jur. Legal Forms 2d, Investment Companies and Advisers §§ 152:2 et seq. (investment companies; organizational documents).

§ 79-7-3. Powers.

Such corporations shall have the authority to exercise all the rights and powers set forth in the said Small Business Investment Act of 1958 as the same may be now or hereafter amended, subject to the limitations of the applicable statutes of this state and the limitations contained in the charter of any such corporation.

SOURCES: Codes, 1942, § 5359-52; Laws, 1960, ch. 183, § 2, eff from and after passage (approved April 30, 1960).

Cross References — General powers of business corporations, see § 79-4-3.02.

Federal Aspects — Small Business Investment Act of 1958, P.L. 85-699, appears generally as 15 USCS §§ 681 et seq.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1715 et seq.	CJS. 19 C.J.S., Corporations §§ 1018 et seq.
6 Am. Jur. Legal Forms 2d, Corporations §§ 74:611 et seq.	

§ 79-7-5. Notes, etc., exempted from ad valorem taxes.

All notes or other evidences of indebtedness held by any small business investment company incorporated in this state bearing a rate of interest which is not usurious under the laws of this state shall be exempt from all ad valorem taxes.

SOURCES: Codes, 1942, § 5359-53; Laws, 1960, ch. 183, § 3, eff from and after passage (approved April 30, 1960).

Cross References — Ad valorem tax exemptions generally, see §§ 27-31-1 et seq. Regulation of interest on money, see §§ 75-17-1 et seq.

§ 79-7-7. Fees and charges for loans.

In addition to such interest charges as may be now or hereafter permitted by law, any small business investment company chartered under the laws of this state may charge to any person, corporation or association who may apply for any loan of money or extension of credit such reasonable fees or charges as may be necessary to cover the actual cost of handling, processing and investigating such applications and such fees or charges shall be exempt from the provisions of the statutes on usury. Provided, however, such fees or charges shall not exceed one percent (1%) of the principal amount of any such loan or credit up to and including the sum of ten thousand dollars (\$10,000.00) and one half of one percent ($\frac{1}{2}$ of 1%) of such principal amount in excess thereof; and no such charge shall exceed the sum of three hundred fifty dollars (\$350.00) for any one transaction.

SOURCES: Codes, 1942, § 5359-54; Laws, 1960, ch. 183, § 4, eff from and after passage (approved April 30, 1960).

Cross References — Regulation of interest on money, see §§ 75-17-1 et seq.

CHAPTER 9

Professional Corporations [Repealed]

Editor's Note — The provisions of former §§ 79-9-1 through 79-9-27 related to professional corporations. For present provisions relating to professional corporations, see §§ 79-10-1 et seq.

§§ 79-9-1 through 79-9-27. Repealed.

Repealed by Laws, 1995, ch. 494, § 35, eff from and after July 1, 1995.

§ 79-9-1. [Codes, 1942, § 5390-41; Laws, 1968, ch. 277, § 1]

§ 79-9-3. [Codes, 1942, § 5390-42; Laws, 1968, ch. 277, § 2; 1970, ch. 313, § 1]

§ 79-9-5. [Codes, 1942, § 5390-43; Laws, 1968, ch. 277, § 3; 1970, ch. 313, § 2]

§ 79-9-7. [Codes, 1942, § 5390-44; Laws, 1968, ch. 277, § 4]

§ 79-9-9. [Codes, 1942, § 5390-45; Laws, 1968, ch. 277, § 5]

§ 79-9-11. [Codes, 1942, § 5390-46; Laws, 1968, ch. 277, § 6]

§ 79-9-13. [Codes, 1942, § 5390-47; Laws, 1968, ch. 277, § 7]

§ 79-9-15. [Codes, 1942, § 5390-48; Laws, 1968, ch. 277, § 8]

§ 79-9-17. [Codes, 1942, § 5390-49; Laws, 1968, ch. 277, § 9]

§ 79-9-19. [Codes, 1942, § 5390-50; Laws, 1968, ch. 277, § 10]

§ 79-9-21. [Codes, 1942, § 5390-51; Laws, 1968, ch. 277, § 11; 1971, ch. 320]

§ 79-9-23. [Codes, 1942, § 5390-52; Laws, 1968, ch. 277, § 12]

§ 79-9-25. [Codes, 1942, § 5390-53; Laws, 1968, ch. 277, § 13]

§ 79-9-27. [Codes, 1942, § 5390-56; Laws, 1968, ch. 277, § 16]

Editor's Note — Former § 79-9-1 was entitled: Legislative intent; title of law.

Former § 79-9-3 was entitled: Definitions.

Former § 79-9-5 was entitled: Who may form professional corporations.

Former § 79-9-7 was entitled: Corporations organized prior to passage of law.

Former § 79-9-9 was entitled: Occupations not included in term "employee."

Former § 79-9-11 was entitled: Laws applicable to professional relationships and liabilities to remain in effect; accountability of corporation's shareholders, officers, and agents; corporate liability.

Former § 79-9-13 was entitled: Limitation on corporate activities; investments.

Former § 79-9-15 was entitled: Who may become shareholders; voting trusts.

Former § 79-9-17 was entitled: Effect of professional disqualification of officer or shareholder; purchase of stock of deceased or disqualified shareholder.

Former § 79-9-19 was entitled: Sale and transfer of shares; restraints on alienation; redemption.

Former § 79-9-21 was entitled: Corporate name; annual report.

Former § 79-9-23 was entitled: Conflicts with business corporation law.

Former § 79-9-25 was entitled: Merger or consolidation of corporations.

Former § 79-9-27 was entitled: Construction of law.

CHAPTER 10

Mississippi Professional Corporation Act

Article 1.	General Provisions	79-10-1
Article 2.	Creation	79-10-11
Article 3.	Shares	79-10-31
Article 4.	Governance	79-10-61
Article 5.	Reorganization and Termination	79-10-81
Article 6.	Foreign Professional Corporations	79-10-91
Article 7.	Miscellaneous Regulatory Provisions	79-10-101
Article 8.	Transitional Provisions	79-10-111

ARTICLE 1.

GENERAL PROVISIONS.

SEC.

79-10-1.	Short title.
79-10-3.	Application of Mississippi Business Corporation Act.
79-10-4.	Uniform Partnership Act inapplicable to professional corporations.
79-10-5.	Definitions.

§ 79-10-1. Short title.

This chapter shall be known and may be cited as the “Mississippi Professional Corporation Act.”

SOURCES: Laws, 1995, ch. 494, § 1, eff from and after July 1, 1995.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq.
Mississippi Limited Liability Company Act, see §§ 79-29-101 et seq.
Foreign limited liability companies, see §§/ 79-29-1001 et seq.

§ 79-10-3. Application of Mississippi Business Corporation Act.

The Mississippi Business Corporation Act applies to professional corporations, both domestic and foreign, to the extent not inconsistent with the provisions of this chapter.

SOURCES: Laws, 1995, ch. 494, § 2, eff from and after July 1, 1995.

JUDICIAL DECISIONS

1. In general.

Although the shareholders did not ratify the president's act of terminating an attorney's position as an employee until more than a year after the fact, the action was invalidated by the lack of yearly

meeting under Miss. Code Ann. § 79-4-7.01 which applied to the corporation by Miss. Code Ann. § 79-10-3. *Jowett v. Scruggs*, 901 So. 2d 638 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273 (Miss. 2005).

§ 79-10-4. Uniform Partnership Act inapplicable to professional corporations.

Professional corporations are not subject to the provisions of the Uniform Partnership Act.

SOURCES: Laws, 2000, ch. 469, § 50, eff from and after July 1, 2000.

§ 79-10-5. Definitions.

As used in this chapter, unless the context requires otherwise:

(a) "Disqualified person" means an individual, general partnership, professional corporation or other entity that for any reason is or becomes ineligible under this chapter to be issued shares by a professional corporation.

(b) "Domestic professional corporation" means a professional corporation.

(c) "Foreign professional corporation" means a corporation or association for profit incorporated for the purpose of rendering professional services under a law other than the law of this state.

(d) "Law" includes rules promulgated in accordance with Section 79-10-103.

(e) "Licensing authority" means the office, board, agency, court or other authority in this state empowered to license or otherwise authorize the rendition of a professional service.

(f) "Professional corporation" means a corporation for profit, other than a foreign professional corporation, subject to the provisions of this chapter.

(g) "Professional service" means a service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service, including, without limitation, certified public accountants, dentists, architects, veterinarians, osteopaths, physicians, surgeons and attorneys-at-law.

(h) "Qualified person" means an individual, general partnership, professional corporation or other entity that is eligible under this chapter to be issued shares by a professional corporation.

SOURCES: Laws, 1995, ch. 494, § 3, eff from and after July 1, 1995.

ARTICLE 2.

CREATION.

SEC.

- | | |
|-----------|--|
| 79-10-11. | Election of professional corporation status. |
| 79-10-13. | Purposes. |
| 79-10-15. | General powers. |
| 79-10-17. | Rendering professional services. |
| 79-10-19. | Prohibited activities. |
| 79-10-21. | Corporate name. |

§ 79-10-11. Election of professional corporation status.

(1) One or more persons may incorporate a professional corporation by delivering to the Secretary of State for filing articles of incorporation which include a statement that (a) it is a professional corporation, and (b) its purpose is to render the specified professional services.

(2) A corporation incorporated under a general law of this state (other than a professional corporation in existence on July 1, 1995, which is subject to the provisions of Section 79-10-111) may elect professional corporation status by amending its articles of incorporation to comply with section (1) of this section and Section 79-10-21.

(3) Nothing in this chapter shall be construed to require a person rendering professional services in this state to render such services through a professional corporation or foreign professional corporation unless a law of this state other than this chapter so requires.

SOURCES: Laws, 1995, ch. 494, § 4, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 156 et seq.

CJS. 18 C.J.S., Corporations §§ 50 et seq.

§ 79-10-13. Purposes.

(1) Except to the extent authorized by subsection (2) of this section, a corporation may elect professional corporation status under Section 79-10-11 solely for the purpose of rendering professional services (including services ancillary to them) and solely within a single profession.

(2) A corporation may elect professional corporation status under Section 79-10-11 for the purpose of rendering professional services within two (2) or more professions, and for the purpose of engaging in any lawful business authorized by Section 79-4-3.01, Mississippi Code of 1972, to the extent the combination of professional purposes or of professional and business purposes is not prohibited by the licensing law of this state applicable to each profession in the combination.

SOURCES: Laws, 1995, ch. 494, § 5, eff from and after July 1, 1995.

Cross References — Corporate name, see § 79-10-21.

Applicability of this section to foreign professional corporation, see § 79-10-91.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 156 et seq.

CJS. 18 C.J.S., Corporations §§ 50 et seq.

§ 79-10-15. General powers.

(1) Except as provided in subsection (2) of this section, a professional corporation has the powers enumerated in Section 79-4-3.02, Mississippi Code of 1972.

(2) A professional corporation may be a promoter, general partner, member, associate, or manager of a partnership, joint venture, trust, or other entity only if the entity is engaged solely in rendering professional services or in carrying on business authorized by the professional corporation's articles of incorporation and not prohibited by the licensing laws applicable to each profession rendering services through the professional corporation.

SOURCES: Laws, 1995, ch. 494, § 6, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 164.
18B Am. Jur. 2d, Corporations §§ 1715-1866..

CJS. 19 C.J.S., Corporations §§ 651 et seq.

§ 79-10-17. Rendering professional services.

(1) A domestic or foreign corporation may render professional services in this state only through individuals licensed or otherwise authorized in this state to render the services.

(2) Subsection (1) does not:

(a) Require an individual employed by a professional corporation to be licensed to perform services for the corporation if a license is not otherwise required;

(b) Prohibit a licensed individual from rendering professional services in his individual capacity although he is a shareholder, director, officer, employee or agent of a domestic or foreign professional corporation;

(c) Prohibit an individual licensed in another state from rendering professional services for a domestic or foreign professional corporation in this state if not prohibited by the licensing authority.

SOURCES: Laws, 1995, ch. 494, § 7, eff from and after July 1, 1995.

§ 79-10-19. Prohibited activities.

(1) A professional corporation may not render any professional service other than the professional service authorized by its articles of incorporation.

(2) Subsection (1) does not prohibit a professional corporation from investing its funds in real estate, mortgages, securities, or any other type of investment or from owning real or personal property appropriate for carrying on its business.

SOURCES: Laws, 1995, ch. 494, § 8, eff from and after July 1, 1995.

§ 79-10-21. Corporate name.

(1) The name of a domestic professional corporation and of a foreign professional corporation authorized to transact business in this state, in addition to satisfying the requirements of Sections 79-4-4.01 and 79-4-15.06, Mississippi Code of 1972:

(a) Must contain the words "professional corporation" or "professional association" or the abbreviations "P.C.," "PC," "P.A." or "PA";

(b) May not contain language stating or implying that it is incorporated for a purpose other than that authorized by Section 79-10-13 and its articles of incorporation; and

(c) Must conform with any rule promulgated by the licensing authority having jurisdiction over a professional service described in the corporation's articles of incorporation.

(2) Sections 79-4-4.01 and 79-4-15.06, Mississippi Code of 1972, do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of a shareholder or former shareholder of the domestic or foreign professional corporation or the name of an individual who was associated with a predecessor of the corporation.

SOURCES: Laws, 1995, ch. 494, § 9, eff from and after July 1, 1995.

Cross References — Name of foreign professional corporation, see § 79-10-91.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 228-250. **CJS.** 18 C.J.S., Corporations §§ 132 et seq.

ARTICLE 3.

SHARES.

SEC.

- | | |
|-----------|--|
| 79-10-31. | Issuance of shares. |
| 79-10-33. | Notice of professional corporation status on shares. |
| 79-10-35. | Share transfer restriction. |
| 79-10-37. | Compulsory acquisition of shares after death or disqualification of shareholder. |
| 79-10-39. | Acquisition procedure. |
| 79-10-41. | Court action to appraise shares. |
| 79-10-43. | Court costs and fees of experts. |
| 79-10-45. | Cancellation of disqualified shares. |

§ 79-10-31. Issuance of shares.

(1) A professional corporation may issue shares, fractional shares and rights or options to purchase shares only to:

(a) Individuals who are authorized by law in this or another state to render a professional service described in the corporation's articles of incorporation;

(b) Professional corporations, domestic or foreign, authorized by law in this state to render a professional service described in the corporation's articles of incorporation;

(c) General partnerships in which all the partners are individuals or entities otherwise authorized by paragraph (a), (b) or (d) of this subsection (1) to be shareholders of a professional corporation under this chapter;

(d) Any other individual or entity not included in paragraph (a), (b) or (c) of this subsection (1) if expressly authorized by the licensing authority having jurisdiction over the professional services described in the articles of incorporation of the professional corporation.

(2) A licensing authority with jurisdiction over a profession may by rule restrict or condition, or revoke in part, the authority of professional corporations subject to its jurisdiction to issue shares. A rule promulgated under this section does not, of itself, make a shareholder of a professional corporation at the time the rule becomes effective a disqualified person.

(3) The articles of incorporation may provide for additional limitations and restrictions on the ownership of shares or for additional qualifications of shareholders and such limitations, restrictions or qualifications shall be valid and enforceable in each instance.

(4) Shares issued in violation of this section or a rule promulgated under this section are void.

SOURCES: Laws, 1995, ch. 494, § 10, eff from and after July 1, 1995.

Cross References — Disqualified person defined, see § 79-10-5.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations § 40.
CJS. 18 C.J.S., Corporations §§ 261 et seq.
 18A Am. Jur. 2d, Corporations §§ 609-788.

§ 79-10-33. Notice of professional corporation status on shares.

(1) In addition to any other statement required or permitted by applicable law, the following statement must appear conspicuously on each share certificate issued by a professional corporation:

The transfer of shares of a professional corporation is restricted by the Mississippi Professional Corporation Act. Shares of a professional corporation are also subject to a statutory compulsory repurchase obligation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares of a professional corporation, the corporation shall send the shareholders a written notice containing the statement required by subsection (1).

SOURCES: Laws, 1995, ch. 494, § 11, eff from and after July 1, 1995.

§ 79-10-35. Share transfer restriction.

(1) A shareholder of a professional corporation may transfer shares, fractional shares and rights or options to purchase shares of the corporation only to qualified persons. A shareholder of a professional corporation may pledge shares to a qualified person or to a disqualified person.

(2) A transfer of shares made in violation of subsection (1), except one made by operation of law or court judgment, is void.

SOURCES: Laws, 1995, ch. 494, § 12, eff from and after July 1, 1995.

Cross References — Disqualified person and qualified person defined, see § 79-10-5.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 570, 572.

CJS. 18 C.J.S., Corporations, §§ 285 et seq.

§ 79-10-37. Compulsory acquisition of shares after death or disqualification of shareholder.

(1) A professional corporation must acquire (or cause to be acquired by a qualified person) the shares of its shareholder if:

(a) The shareholder dies and the successor in interest to the deceased shareholder is not a qualified person, except as provided in subsection (3);

(b) The shareholder becomes a disqualified person, except as provided in subsection (3); or

(c) The shares are transferred by operation of law or court judgment to a disqualified person, except as provided in subsection (3).

(2) If a price for the shares is established in accordance with the articles of incorporation or bylaws or by private agreement, that price controls. If the price is not so established, the corporation shall acquire the shares in accordance with Section 79-10-39. If the disqualified person rejects the corporation's purchase offer made pursuant to Section 79-10-39, either the person or the corporation may commence a proceeding under Section 79-10-41 to determine the price of the shares.

(3) This section does not require the acquisition of shares in the event of disqualification if the disqualification lasts no more than five (5) months from the date the disqualification or transfer occurs. A shareholder who becomes a disqualified person shall notify the corporation promptly.

(4) This section and Section 79-10-39 do not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to a former shareholder if otherwise permitted by law.

(5) A provision for the acquisition of shares contained in a professional corporation's articles of incorporation or bylaws, or in a private agreement, is specifically enforceable.

SOURCES: Laws, 1995, ch. 494, § 13, eff from and after July 1, 1995.

Cross References — Disqualified person and qualified person defined, see § 79-10-5.

JUDICIAL DECISIONS

1. In general.

Where an employment agreement between an attorney and a law firm, which had previously been determined to be a valid agreement by a federal court, provided that the attorney had to relinquish

her shares in the firm if she was terminated as an employee, the agreement was enforceable under Miss. Code Ann. § 79-10-37(5). *Jowett v. Scruggs*, 901 So. 2d 638 (Miss. Ct. App. 2004), cert. denied, 901 So. 2d 1273 (Miss. 2005).

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2354-2355.

§ 79-10-39. Acquisition procedure.

(1) If shares must be acquired under Section 79-10-37, the professional corporation shall deliver a written notice to the executor or administrator of the estate of its deceased shareholder, or to the disqualified person or transferee, offering to purchase the shares at a price the corporation believes represents their fair value as of the date of death, disqualification, or transfer. The offer notice must be accompanied by the corporation's balance sheet for the most recent fiscal year ending prior to the date of death or disqualification, an income statement for that fiscal year, a statement of changes in shareholders' equity for that fiscal year, and the latest available interim financial statements, if any.

(2) The disqualified person has thirty (30) days from the effective date of the notice to accept the corporation's offer or demand that the corporation commence a proceeding under Section 79-10-41 to determine the fair value of his shares. If he accepts the offer, the corporation shall make payment for the shares within sixty (60) days from the effective date of the offer notice (unless a later date is agreed on) upon the disqualified person's surrender of his shares to the corporation.

(3) After the corporation makes payment for the shares, the disqualified person has no further interest in them.

SOURCES: Laws, 1995, ch. 494, § 14, eff from and after July 1, 1995.

Cross References — Disqualified person and qualified person defined, see § 79-10-5.

Cancellation of disqualified shares, see § 79-10-45.

Application of section to existing professional corporations, see § 79-10-111.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations § 1697. **CJS.** 18 C.J.S., Corporations §§ 380, 381.

§ 79-10-41. Court action to appraise shares.

(1) If the disqualified shareholder does not accept the professional corporation's offer under Section 79-10-39(2) within the thirty-day period, the shareholder during the following thirty-day period may deliver a written notice to the corporation demanding that it commence a proceeding to determine the fair value of the shares. The corporation may commence a proceeding at any time during the sixty (60) days following the effective date of its offer notice. If it does not do so, the shareholder may commence a proceeding against the corporation to determine the fair value of his shares.

(2) The corporation or disqualified shareholder shall commence the proceeding in the chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located. The corporation shall make the disqualified person a party to the proceeding as in an action against his shares. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the power described in the order appointing them, or in any amendment to it.

(4) The disqualified shareholder is entitled to judgment for the fair value of his shares determined by the court as of the date of death, disqualification or transfer together with interest from that date at a rate found by the court to be fair and equitable.

(5) The court may order the judgment paid in installments determined by the court.

SOURCES: Laws, 1995, ch. 494, § 15, eff from and after July 1, 1995.

Cross References — Assessment of appraisal proceeding court costs and fees, see § 79-10-43.

Cancellation of disqualified shares, see § 79-10-45.

Application of section to existing professional corporations, see § 79-10-111.

§ 79-10-43. Court costs and fees of experts.

(1) The court in an appraisal proceeding commenced under Section 79-10-41 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and shall assess the costs against the professional corporation. But the court may assess costs against the disqualified shareholder, in an amount the court finds equitable, if the court finds the shareholder acted arbitrarily, vexatiously, or not in good faith in refusing to accept the corporation's offer.

(2) The court may also assess the fees and expenses of counsel and experts for the disqualified shareholder against the corporation and in favor of the shareholder if the court finds that the fair value of his shares substantially exceeded the amount offered by the corporation or that the corporation did not make an offer.

SOURCES: Laws, 1995, ch. 494, § 16, eff from and after July 1, 1995.

Cross References — Application of section to existing professional corporations, see § 79-10-111.

§ 79-10-45. Cancellation of disqualified shares.

If the shares of a disqualified person are not acquired under Section 79-10-39 or 79-10-41 within ten (10) months after the death of the shareholder or within five (5) months after the disqualification or transfer, the professional corporation shall immediately cancel the shares on its books and the disqualified person has no further interest as a shareholder in the corporation other than his right to payment of the fair value of the shares under Section 79-10-39 or 79-10-41.

SOURCES: Laws, 1995, ch. 494, § 17, eff from and after July 1, 1995.

Cross References — Disqualified person defined, see § 79-10-5.

ARTICLE 4.

GOVERNANCE.

SEC.

- 79-10-61. Voting of shares.
- 79-10-63. Confidential relationship.
- 79-10-65. Privileged communications.
- 79-10-67. Responsibility for professional services.

§ 79-10-61. Voting of shares.

(1) Only a qualified person may be appointed a proxy to vote shares of a professional corporation.

(2) A voting trust with respect to shares of a professional corporation is not valid unless all of its trustees and beneficiaries are qualified persons. But if a beneficiary who is a qualified person dies or becomes disqualified, a voting trust valid under this subsection continues to be valid for ten (10) months after the date of death or for five (5) months after the disqualification occurred.

SOURCES: Laws, 1995, ch. 494, § 18, eff from and after July 1, 1995.

Cross References — Disqualified person and qualified person defined, see § 79-10-5.

§ 79-10-63. Confidential relationship.

(1) The relationship between an individual rendering professional services as an employee of a domestic or foreign professional corporation and his client or patient is the same as if the individual were rendering the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional corporation and the client or patient for whom its employee is rendering professional services is the same as that between the client or patient and the employee.

SOURCES: Laws, 1995, ch. 494, § 19, eff from and after July 1, 1995.

Cross References — Foreign professional corporations generally, see §§ 79-10-91 through 79-10-95.

§ 79-10-65. Privileged communications.

A privilege applicable to communications between an individual rendering professional services and the person receiving the services recognized under the statute or common law of this state is not affected by this chapter. The privilege applies to a domestic or foreign professional corporation and to its employees in all situations in which it applies to communications between an individual rendering professional services on behalf of the corporation and the person receiving the services.

SOURCES: Laws, 1995, ch. 494, § 20, eff from and after July 1, 1995.

Cross References — Foreign professional corporations generally, see §§ 79-10-91 through 79-10-95.

§ 79-10-67. Responsibility for professional services.

(1) Each individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for a negligent or wrongful act or omission in which he personally participates to the same extent as if he rendered the services as a sole practitioner. An employee or shareholder of a domestic or foreign professional corporation is not liable, however, for the conduct of other employees or shareholders of the corporation, except a person under his direct supervision and control, while rendering professional services on behalf of the professional corporation to the person for whom such professional services were being rendered.

(2) A domestic or foreign professional corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation is liable to the same extent as its employees.

SOURCES: Laws, 1995, ch. 494, § 21, eff from and after July 1, 1995.

Cross References — Foreign professional corporations generally, see §§ 79-10-91 through 79-10-95.

JUDICIAL DECISIONS

1.-2. [Reserved for future use.]

3. Liability.

1.-2. [Reserved for future use.]

3. Liability.

Appellate court could not, as a matter of law, determine that the entire liability

was attributable to the errors of the architect; thus, it reversed and remanded for a new trial to determine what portion, if any, of the architectural firm's liability may be imposed to the architect individually. *Lambert Cmty. Hous. Group, L.P. v. Wenzel*, 987 So. 2d 468 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1715-1866.

CJS. 19 C.J.S., Corporations §§ 651 et seq.

ARTICLE 5.

REORGANIZATION AND TERMINATION.

SEC.

79-10-81. Merger.

79-10-83. Termination of professional activities.

79-10-85. Judicial dissolution.

§ 79-10-81. Merger.

(1) If all the shareholders of the disappearing and surviving corporations are qualified to be shareholders of the surviving corporation, a professional corporation may merge with another domestic or foreign professional corporation or with a domestic or foreign business corporation.

(2) If the surviving corporation is to render professional services in this state, it must comply with this chapter.

SOURCES: Laws, 1995, ch. 494, § 22, eff from and after July 1, 1995.

Cross References — Foreign professional corporations generally, see §§ 79-10-91 through 79-10-95.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2162-2347.

CJS. 19 C.J.S., Corporations §§ 885 et seq.

§ 79-10-83. Termination of professional activities.

If a professional corporation ceases to render professional services, it must amend its articles of incorporation to delete references to rendering professional services and to conform its corporate name to the requirements of

Section 79-4-4.01, Mississippi Code of 1972. After the amendment becomes effective, the corporation may continue in existence as a business corporation under the Mississippi Business Corporation Act and it is no longer subject to this chapter.

SOURCES: Laws, 1995, ch. 494, § 23, eff from and after July 1, 1995.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 84-99, 179. **CJS.** 18 C.J.S., Corporations §§ 139, 140 et seq.

§ 79-10-85. Judicial dissolution.

The Attorney General may commence a proceeding under Sections 79-4-14.30 through 79-4-14.33, Mississippi Code of 1972, to dissolve a professional corporation if:

(a) The Secretary of State or a licensing authority with jurisdiction over a professional service described in the corporation's articles of incorporation serves written notice on the corporation under Section 79-4-5.04, Mississippi Code of 1972, that it has violated or is violating a provision of this chapter;

(b) The corporation does not correct each alleged violation, or demonstrate to the reasonable satisfaction of the Secretary of State or licensing authority that it did not occur, within sixty (60) days after service of the notice is perfected under Section 79-4-5.04, Mississippi Code of 1972; and

(c) The Secretary of State or licensing authority certifies to the Attorney General a description of the violation, that it notified the corporation of the violation, and that the corporation did not correct it, or demonstrate that it did not occur, within sixty (60) days after perfection of service of the notice.

SOURCES: Laws, 1995, ch. 494, § 24, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2348-2515. **CJS.** 19 C.J.S., Corporations §§ 914-916 et seq.

ARTICLE 6.

FOREIGN PROFESSIONAL CORPORATIONS.

SEC.

- 79-10-91. Authority to transact business.
- 79-10-93. Application for certificate of authority.
- 79-10-95. Revocation of certificate of authority.

§ 79-10-91. Authority to transact business.

(1) A foreign professional corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) A foreign professional corporation may not obtain a certificate of authority unless:

(a) Its corporate name satisfies the requirements of Section 79-10-21;

(b) It is incorporated for one or more of the purposes described in Section 79-10-13; and

(c) All of its shareholders would be qualified persons if the foreign professional corporation were a domestic professional corporation.

SOURCES: Laws, 1995, ch. 494, § 25, eff from and after July 1, 1995.

Cross References — Domestic professional corporation qualified person defined, see § 79-10-5.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1715, 1730.

CJS. 19 C.J.S., Corporations §§ 992 et seq.

§ 79-10-93. Application for certificate of authority.

The application of a foreign professional corporation for a certificate of authority to render professional services in this state must contain the information called for by Section 79-4-15.03, Mississippi Code of 1972, and in addition include a statement that all of its shareholders meet the requirements of Section 79-10-91(2)(c).

SOURCES: Laws, 1995, ch. 494, § 26, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 204 et seq.

CJS. 19 C.J.S., Corporations §§ 968 et seq.

§ 79-10-95. Revocation of certificate of authority.

The Secretary of State may administratively revoke under Sections 79-4-15.30 through 79-4-15.32, Mississippi Code of 1972, the certificate of authority of a foreign professional corporation authorized to transact business in this state if a licensing authority with jurisdiction over a professional service described in the corporation's articles of incorporation certifies to the Secretary of State that the corporation has violated or is violating a provision of this chapter and describes the violation. Such administrative revocation may be challenged by the professional corporation in the chancery court of the county where the professional corporation maintains its principal place of business.

SOURCES: Laws, 1995, ch. 494, § 27, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 261. **CJS.** 19 C.J.S., Corporations §§ 968 et seq.

ARTICLE 7.

MISCELLANEOUS REGULATORY PROVISIONS.

SEC.

79-10-101. Annual report to Secretary of State.
79-10-103. Rulemaking by licensing authority.
79-10-105. Licensing authority's regulatory jurisdiction.

§ 79-10-101. Annual report to Secretary of State.

The annual report required by Section 79-4-16.22, Mississippi Code of 1972, for each domestic professional corporation, and for each foreign professional corporation authorized to transact business in this state, must include a statement that all of its shareholders are qualified persons with respect to the corporation or in the case of a foreign professional corporation that all of its shareholders meet the requirements of Section 79-10-91(2)(c).

SOURCES: Laws, 1995, ch. 494, § 28, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 205, 275, 284. **CJS.** 19 C.J.S., Corporations §§ 968 et seq.
18A Am. Jur. 2d, Corporations § 1612.

§ 79-10-103. Rulemaking by licensing authority.

Each licensing authority is empowered to promulgate rules expressly authorized by this chapter if the rules are consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct.

SOURCES: Laws, 1995, ch. 494, § 29, eff from and after July 1, 1995.

Cross References — Rules promulgated in accordance with this section are included within the definition of "law" as used in this chapter, see § 79-10-5

§ 79-10-105. Licensing authority's regulatory jurisdiction.

This chapter does not restrict the jurisdiction of a licensing authority over individuals rendering a professional service within the jurisdiction of the licensing authority, nor does it affect the interpretation or application of any law pertaining to standards of professional conduct.

SOURCES: Laws, 1995, ch. 494, § 30, eff from and after July 1, 1995.

ARTICLE 8.

TRANSITIONAL PROVISIONS.

SEC.

- 79-10-111. Application to existing corporations.
- 79-10-113. Reservation of power to amend or repeal.
- 79-10-115. Saving provisions.
- 79-10-117. Severability.

§ 79-10-111. Application to existing corporations.

(1) Except as otherwise provided in this section, this chapter applies to professional corporations in existence on July 1, 1995. A professional corporation in existence on July 1, 1995, may, but is not required to, amend its articles of incorporation to comply with this chapter. If a professional corporation in existence on July 1, 1995, amends its articles of incorporation for any purpose after July 1, 1995, it must also amend its articles of incorporation to comply with this chapter.

(2) This chapter does not apply to a corporation now existing or later incorporated under a law of this state that is not a professional corporation unless the corporation elects professional corporation status under Section 79-10-11.

(3) This chapter does not affect an existing or future right or privilege to render professional services through the use of any other form of business entity.

(4) Unless otherwise specifically provided by an amendment to the articles of incorporation, for professional corporations in existence on July 1, 1995, Sections 79-10-39, 79-10-41 and 79-10-43 shall be applied by substituting the term "book value" for the term "fair value" in such sections only. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by the professional corporation and shall be determined as of the end of the month immediately preceding the death or disqualification of the shareholder.

SOURCES: Laws, 1995, ch. 494, § 31, eff from and after July 1, 1995.

RESEARCH REFERENCES

- Am Jur.** 18 Am. Jur. 2d, Corporations §§ 84-99.
- CJS.** 18 C.J.S., Corporations §§ 139, 140 et seq.
- 18A Am. Jur. 2d, Corporations § 179.

§ 79-10-113. Reservation of power to amend or repeal.

The Mississippi Legislature has power to amend or repeal all or part of this chapter at any time and all domestic and foreign professional corporations subject to this chapter are governed by the amendment or repeal.

SOURCES: Laws, 1995, ch. 494, § 32, eff from and after July 1, 1995.

§ 79-10-115. Saving provisions.

(1) Except as provided in subsection (2), the repeal of a statute by this chapter does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal;

(d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

SOURCES: Laws, 1995, ch. 494, § 33, eff from and after July 1, 1995.

§ 79-10-117. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 1995, ch. 494, § 34, eff from and after July 1, 1995.

CHAPTER 11

Nonprofit, Nonshare Corporations and Religious Societies

General Provisions	79-11-1
Conduct of Private Foundations	79-11-51
Mississippi Nonprofit Corporation Act	79-11-101
Regulation of Charitable Solicitations	79-11-501
Uniform Management of Institutional Funds Act	79-11-601
Charitable Gift Annuities	79-11-651

GENERAL PROVISIONS

SEC.	
79-11-1 through 79-11-29. Repealed.	
79-11-31. Religious societies.	
79-11-33. Religious societies may own certain property.	
79-11-35 and 79-11-37. Repealed.	
79-11-39. Repealed.	
79-11-41. Trust funds for church maintenance; election to be subject to provisions of §§ 79-11-41 through 79-11-47; religious society defined.	
79-11-43. Designation as “perpetual religious society trust funds religious societies.”	
79-11-45. Operation and establishment of a perpetual religious society trust fund.	
79-11-47. Accounting and reporting requirements for auditing procedures for certain records.	

§§ 79-11-1 through 79-11-29. Repealed.

Repealed by Laws, 1987, ch. 485, § 153, eff from and after January 1, 1988.

§ 79-11-1. [Codes, 1942, § 5310.1; Laws, 1958, ch. 199, §§ 1-3; Laws, 1960, ch. 180, §§ 1-5; Laws, 1962, chs. 229, 230; Laws, 1964, ch. 267; Laws, 1968, ch. 275, §§ 1, 2; Laws, 1970, ch. 308, § 1; Laws, 1976, ch. 399; Laws, 1977, ch. 390]

§ 79-11-3. [Codes, 1930, § 4140; 1942, § 5319; Laws, 1928, ch. 90; Laws, 1954, ch. 199, § 1; Laws, 1958, ch. 200; Laws, 1962, ch. 235, § 150]

§ 79-11-5. [Codes, 1906, § 930; Hemingway's 1917, § 4104; 1930, § 4141; 1942, § 5320; Laws, 1935, ch. 31; Laws, 1962, ch. 235, § 150]

§ 79-11-7. [Codes, 1906, § 936; Hemingway's 1917, § 4114; 1930, § 4143; 1942, § 5322; Laws, 1928, ch. 78; Laws, 1962, ch. 235, § 150]

§ 79-11-9. [Codes, 1880, § 1029; 1892, § 834; 1906, § 899; Hemingway's 1917, § 4071; 1930, § 4144; 1942, § 5323; Laws, 1962, ch. 235, § 150]

§ 79-11-11. [Codes, 1857, ch. 35, art. 2; 1871, § 2401; 1880, § 1030; 1892, § 835; 1906, § 900; Hemingway's 1917, § 4072; 1930, § 4145; 1942, § 5324; Laws, 1962, ch. 235, § 150]

§ 79-11-13. [Codes, 1942, § 5324-01; Laws, 1964, ch. 268, § 1]

§ 79-11-15. [Codes, 1942, § 5324-02; Laws, 1964, ch. 268, § 2]

§ 79-11-17. [Codes, 1942, § 5324-03; Laws, 1964, ch. 268, § 3]

§ 79-11-19. [Codes, 1942, § 5324-04; Laws, 1964, ch. 268, § 4]

§ 79-11-21. [Codes, 1942, § 5324-05; Laws, 1964, ch. 268, § 5]

§ 79-11-23. [Codes, 1942, § 5324-06; Laws, 1964, ch. 268, § 6; Laws, 1986, ch. 309]

§§ 79-11-25 through 79-11-29. [Codes, 1942, §§ 5324-07 to 5324-09; Laws, 1964, ch. 268, §§ 7-9]

Editor's Note — For text of the Mississippi Nonprofit Corporation Act, which became effective January 1, 1988, see §§ 79-11-101 et seq.

§ 79-11-31. Religious societies.

(1) Any religious society, consisting of the members of any particular denomination or congregation, desiring to act as an organized body may do so by associating together and electing or appointing from its membership any number of officers, trustees, or managers, by whatever name known, for the purpose of managing the affairs of the society. Such society or association shall keep a record of its proceedings, which shall show the name of the society, its organization, and the election of the officers, trustees, or managers; but the society so organized at each particular locality shall be a distinct and independent society. Any society so organized may sue and be sued by its society name or appellation, and process may be served on its presiding or chief officer, or secretary, or on the trustees or manager.

Upon the completion of the organization of any such society, the title to the real property theretofore owned by it shall thereupon vest in the society as hereunder organized, and shall not be divested out of the same, or encumbered, except by a deed, deed of trust, or mortgage duly executed under the authority of a resolution adopted by a majority vote of the members present at a meeting duly called for that purpose, at which meeting at least twenty percent (20%) of the members in good standing of such organized society must be present. The minutes of such meeting shall be entered in the official record book of such society, and the aforesaid resolution shall designate which officers, trustees or managers of such society are to execute such deed, deed of trust, or mortgage.

The provisions of this subsection shall also apply to all real property acquired by any such society after its organization hereunder.

(2) Whenever any number of religious societies or organized bodies or congregations formed under subsection (1) of this section shall decide to act together as an organized body, they may do so in the manner provided in subsection (1) by and through representatives elected or appointed for that purpose, and when so organized shall likewise be a distinct and independent society or group, by whatever name called, and subject to sue and be sued and be served with process in the same manner.

Any such body shall likewise have the right to own all, but only, those properties permitted under Section 79-11-33 of the Mississippi Code of 1972.

SOURCES: Codes, 1857, ch. 35, art. 52; 1871, § 2437; 1880, § 1071; 1892, § 859; 1906, § 933; Hemingway's 1917, § 4109; 1930, § 4168; 1942, § 5350; Laws, 1952, ch. 343; Laws, 1956, ch. 177, §§ 1, 2.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, errors in the text of subsection (2) were corrected as follows: in the first paragraph, "representatives" was substituted for "representative," and in the second paragraph, the word "the" was inserted following "body shall have."

Cross References — Lease of church land by a board of education, see § 29-3-69. Application to religious corporations, see § 79-11-401.

For the service of process, see Miss. Rule of Civil Proc. 4.

JUDICIAL DECISIONS

1. In general.
2. Incorporation and organization.
3. Effect of lack of incorporation.
4. Acquisition and ownership of property.

1. In general.

This section [Code 1942, § 5350] and Code of 1942, § 5351, were inapplicable to a dispute as to use and occupancy of church property between the majority members of a church, who desired to withdraw from the church conference and enter a new church organization, and the minority, who desired to continue the existing church under the faith and rules of discipline by which the church was formerly governed. *Linton v. Flowers*, 230 Miss. 838, 94 So. 2d 615 (1957).

2. Incorporation and organization.

Proof showing that a church had been an active organization since about 1920, since 1950 had maintained records showing the names of the trustees, had employed a preacher since the latter date, had conducted regular church services, and that its parsonage had been occupied, was ample to show the existence of the church and that it was an organized religious congregation or society under this section [Code 1942, § 5350]. *Casey v. Valentour*, 218 So. 2d 863 (Miss. 1969).

Church was operating as an unincorporated religious society under Miss. Code Ann. § 79-11-31 where it manifested a desire to act as an organized body and membership associating together, it had elected or appointed officers, trustees, or managers to manage its affairs, and it kept records of its proceedings even though most of the records had been lost in a recent fire. *Coleman v. State*, 947 So. 2d 878 (Miss. 2006).

Religious organization is not corporate body under statute without some affirmative action to avail itself of provisions of statute. *Gullett v. First Christian Church of Meridian*, 154 Miss. 516, 122 So. 732 (1929).

It is common knowledge that religious congregation maintain organizations and engage in church activities, and appoint or elect from membership officers to transact business. *Gullett v. First Christian Church of Meridian*, 154 Miss. 516, 122 So. 732 (1929).

For religious organization to become organized body under statute, it must elect from its membership officers, etc., and must keep record of its proceedings, showing among other things its organization. *Gullett v. First Christian Church of Meridian*, 154 Miss. 516, 122 So. 732 (1929).

Evidence held insufficient to show religious organization, sued for personal injuries, was legal entity organized under statute. *Gullett v. First Christian Church of Meridian*, 154 Miss. 516, 122 So. 732 (1929).

3. Effect of lack of incorporation.

Officer of religious congregation on whom process was served as agent could plead nul tiel corporation in his own name. *Gullett v. First Christian Church of Meridian*, 154 Miss. 516, 122 So. 732 (1929).

Unincorporated church society cannot be dealt with nor act as corporation. *Paine's Chapel of African Methodist Episcopal Church v. Aberdeen Realty*, 120 Miss. 12, 81 So. 650 (1919).

4. Acquisition and ownership of property.

Where a deed named the grantee as "Church and Trustees" without naming

any church organization or trustee, the deed was void for want of a grantee and the attempted qualification therein that the property should be "free for all denominations so as to not conflict with our meeting days" was likewise void and appellants, having acquired title by adverse possession for more than six times the statutory period, were not bound thereby. *Ivey v. Geisler*, 213 Miss. 212, 56 So. 2d 501 (1952).

Because a resolution only authorized an exchange of deeds to correct an inaccurate property description, the inclusion of a reverter clause in land deeded to a church was not valid because there was no compliance with Miss. Code Ann. § 79-11-31(1). *Sones v. Sones Chapel Baptist Church*, 946 So. 2d 833 (Miss. Ct. App. 2007).

The strict rule applicable to ordinary property in respect of the character of adverse possession required is not applied in the case of property used for church purposes and there is sufficient possession

of such property if it is used in the way that such property is ordinarily used. *Ivey v. Geisler*, 213 Miss. 212, 56 So. 2d 501 (1952).

Unincorporated religious societies may acquire title by adverse possession even as against a grantor where property is openly diverted from a use specified in the grant. *Ivey v. Geisler*, 213 Miss. 212, 56 So. 2d 501 (1952).

Religious society, having unlawfully acquired title to land, may continue in enjoyment thereof until right thereto is successfully questioned in direct proceeding by State. *Peeples v. Enochs*, 170 Miss. 472, 153 So. 796 (1934), but see *Stern v. Gatzaros*, 1999 U.S. Dist. LEXIS 3755 (N.D. Miss. 1999).

Deed to C. Schoolhouse and C. Graveyard, neither of which appeared on face to be religious society, held void for want of grantee, where such society never existed. *Morgan v. Collins Sch.*, 157 Miss. 295, 127 So. 565 (1930).

RESEARCH REFERENCES

ALR. Necessity of delivery of stock certificate to complete valid gift of stock. 23 A.L.R.2d 1171.

Validity of restrictions on alienation or transfer of corporate stock. 61 A.L.R.2d 1318.

Determination of property rights between local church and parent church body: modern view. 52 A.L.R.3d 324.

Liability of religious association for damages for intentionally tortious conduct in recruitment, indoctrination, or related activity. 40 A.L.R.4th 1062.

Liability for personal injury or death allegedly caused by defect in church premises. 8 A.L.R.5th 1.

Am Jur. 66 Am. Jur. 2d, Religious Societies §§ 3 et seq.

16 Am. Jur. Legal Forms 2d, Religious Societies §§ 224:1 et seq.

21 Am. Jur. Pl & Pr Forms (Rev), Religious Societies, Forms 1 et seq. (organization).

§ 79-11-33. Religious societies may own certain property.

Any religious society, ecclesiastical body and/or any congregation thereof may hold and own the following real property, but no other, viz.:

(a) Each house or building used as a place of worship, with a reasonable quantity of ground annexed to such building or house.

(b) Each house or building, together with a reasonable quantity of ground thereto annexed, used:

- (i) As a parish house;
- (ii) As a community facility;
- (iii) As a Sunday school facility;
- (iv) As an educational facility;

(v) For the care of children on a nonprofit basis.

(c) Each house used for a place of residence for its minister, bishop or representative, together with a reasonable quantity of ground thereto annexed. For purposes of this paragraph, the term "minister" shall mean a minister, priest, pastor, rabbi, nun or other clergy who: (i) has been duly ordained, licensed or qualified according to the principles and procedures prescribed by his religious society, (ii) is regularly engaged as a vocation in preaching and teaching the beliefs of his religious society, in administering its rites and sacraments, and in conducting public worship services in the tradition of his religious society, and (iii) who discharges the duties of a minister in the tradition of his religious society.

(d) A hospital or infirmary and a nurses' home in connection therewith, together with a reasonable quantity of ground thereto annexed.

(e) All buildings used by a school, college or seminary of learning contiguous to and/or a part of the college or seminary plant, for administration, classrooms, laboratories, observatories, dormitories, and for housing the faculty and students thereof, together with a reasonable quantity of land in connection therewith.

(f) All buildings used for an orphan asylum or institution, together with a reasonable quantity of ground used in connection therewith.

(g) All buildings used for a campground or assembly for religious purposes, together with a reasonable quantity of land in connection therewith.

(h) Lands for a cemetery or cemeteries of sufficient dimensions.

(i) All buildings and grounds used for denominational headquarters and/or administrative purposes, together with a reasonable quantity of ground annexed thereto. The title to any buildings and grounds heretofore acquired under this subsection shall not be hereafter held invalid because of the lack of authority of the owner thereof to obtain or hold such title. Provided, however, that the provisions of this subsection shall not affect any pending litigation.

(j) Any land which is maintained and used as a parking area for the convenience of the members of the congregation, church, cathedral, mission or other unit or administrative unit from which the society receives no revenue, fee, charge or assessment. The land on which the parking area is located may be noncontiguous to the land on which the building used as the place of worship is located.

SOURCES: Codes, 1906, § 934; Hemingway's 1917, § 4110; 1930, § 4169; 1942, § 5351; Laws, 1926, ch. 194; Laws, 1946, ch. 279, § 1; Laws, 1977, ch. 440, eff from and after January 1, 1978.

Cross References — Lease of church land by a board of education, see § 29-3-69. Trust funds for maintenance of cemeteries, see § 41-43-3. Application to religious corporations, see § 79-11-401. Applicability of burial associations law, see § 83-37-33.

JUDICIAL DECISIONS

1. In general.
2. Ownership of property, generally.
3. Acquisition of title by adverse possession.
4. Taxation and tax exemption.

1. In general.

A dispute as to who were the proper trustees of the property of a congregational church and the identity of the pastor and deacons were ecclesiastical questions rather than issues of property rights, and did not present proper questions for the court's decisions, even though an issue concerning property was indirectly involved, such property issue being so collateral and insubstantial as not to warrant judicial interference with the freedom of the church. *Blue v. Jones*, 230 So. 2d 569 (Miss. 1970).

Code 1942, § 5350, and this section [Code 1942, § 5351] were inapplicable to a dispute as to use and occupancy of church property between the majority members of the church, who desired to withdraw from the church conference and enter a new church organization, and the minority, who desired to continue the existing church under the faith and rules of discipline by which the church was formerly governed. *Linton v. Flowers*, 230 Miss. 838, 94 So. 2d 615 (1957).

2. Ownership of property, generally.

Church which is incorporated under laws of this state is necessary party to suit when its physical assets held in its corporate capacity are involved. *Conic v. Cobbins*, 208 Miss. 203, 44 So. 2d 52 (1950).

Unless some property rights are involved, civil courts have no jurisdiction over ecclesiastical controversies and are without jurisdiction to decide who is, or who ought to be, presiding bishop of the diocese. *Conic v. Cobbins*, 208 Miss. 203, 44 So. 2d 52 (1950).

Religious society, having unlawfully acquired title to land, may continue in enjoyment thereof until right thereto is successfully questioned in direct proceeding by state. *Peebles v. Enochs*, 170 Miss. 472, 153 So. 796 (1934), but see *Stern v.*

Gatzaros, 1999 U.S. Dist. LEXIS 3755 (N.D. Miss. 1999).

Deed to C. Schoolhouse and C. Graveyard, neither of which appeared on face to be religious society, held void for want of grantee, where such society never existed. *Morgan v. Collins Sch.*, 157 Miss. 295, 127 So. 565 (1930).

Religious society's property holding in excess of statutory limit is not forfeited, statute not expressly requiring it. *State ex rel. Knox v. Sisters of Mercy*, 150 Miss. 559, 115 So. 323 (1928).

Only the state can take advantage of restrictions imposed by statute on amount of property that religious society can hold. *State ex rel. Knox v. Sisters of Mercy*, 150 Miss. 559, 115 So. 323 (1928).

State can merely force a sale of property held by religious society in excess of statutory limit. *State ex rel. Knox v. Sisters of Mercy*, 150 Miss. 559, 115 So. 323 (1928).

3. Acquisition of title by adverse possession.

An unincorporated religious society is an entity, and it may acquire title to real estate by adverse possession; and there is sufficient possession of such property if it is used in the way such property is ordinarily used. *Casey v. Valentour*, 218 So. 2d 863 (Miss. 1969).

Unincorporated religious societies may acquire title by adverse possession even as against a grantor where property is openly diverted from a use specified in the grant. *Ivey v. Geisler*, 213 Miss. 212, 56 So. 2d 501 (1952).

The strict rule applicable to ordinary property in respect of the character of adverse possession required is not applied in the case of property used for church purposes and there is sufficient possession of such property if it is used in the way that such property is ordinarily used. *Ivey v. Geisler*, 213 Miss. 212, 56 So. 2d 501 (1952).

Where a deed named the grantee as "Church and Trustees" without naming any church organization or trustee, the deed was void for want of a grantee and the attempted qualification therein that the property should be "free for all de-

nominations so as to not conflict with our meeting days" was likewise void, and appellants, having acquired title by adverse possession for more than six times the statutory period, were not bound thereby. *Ivey v. Geisler*, 213 Miss. 212, 56 So. 2d 501 (1952).

4. Taxation and tax exemption.

While the fact that a religious or charitable society chooses to act in the corporate form may not disqualify it for an exemption from ad valorem taxation under § 27-31-1(d), the general exemption provided in the first clause of § 27-31-1(d) is limited to property used for the activities of the society itself, and the amount of property is limited by the usages enumerated in § 79-11-33. *Hattiesburg Area Senior Servs., Inc. v. Lamar County*, 633 So. 2d 440 (Miss. 1994).

Land owned by college, located about one-fourth of a mile from the campus and used for truck gardening and for growing corn and hay for the horses owned and used by the college, and not in excess of the maximum limitation on exempt holdings, was exempt from taxation. *City of*

Jackson v. Belhaven College, 195 Miss. 734, 15 So. 2d 621 (1943).

Attempted back assessment of taxes against tract of land owned by college, not in excess of maximum limitation, located about one-fourth of a mile from the campus and used for trucking purposes, as well as for growing corn and hay for the horses owned and used by the college, was void, since such tract was exempt from taxation. *City of Jackson v. Belhaven College*, 195 Miss. 734, 15 So. 2d 621 (1943).

Religious society's land used in connection with college held not taxable merely because platted and subdivided into lots for future sale. *Chandler v. Executive Comm. on Educ.*, 165 Miss. 690, 146 So. 597 (1933).

Injunction held not proper method to determine exemption of church property. *North Am. Old Roman Catholic Diocese v. Havens*, 164 Miss. 119, 144 So. 473, 84 A.L.R. 1313 (1932).

Property owned by church not exempt from taxation when it has no right to own it. *Gunter v. City of Jackson*, 130 Miss. 686, 94 So. 842, 27 A.L.R. 1043 (1923).

RESEARCH REFERENCES

ALR. Adverse possession by religious society. 4 A.L.R.2d 123.

Validity, as charitable trust, of gift to church, church society, or trustees or officers thereof, without declaration or restriction as to its use or purpose. 81 A.L.R.2d 819.

Determination of property rights between local church and parent church body: modern view. 52 A.L.R.3d 324.

Am Jur. 66 Am. Jur. 2d, Religious Societies §§ 34 et seq.

4 Am. Jur. Legal Forms 2d, Cemeteries § 54:71.1 (rules — lot owners-restriction of burial to persons of certain religious faith).

16 Am. Jur. Legal Forms 2d, Religious Societies §§ 224:81 et seq.

21 Am. Jur. Pl & Pr Forms (Rev), Religious Societies, Forms 31 et seq. (property and financial management).

CJS. 76 C.J.S., Religious Societies §§ 72, 73 et seq.

§§ 79-11-35 and 79-11-37. Repealed.

Repealed by Laws, 1987, ch. 485, § 153, eff from and after January 1, 1988.

§ 79-11-35. [En, Laws, 1976, ch. 333, § 1]

§ 79-11-37. [En, Laws, 1976, ch. 333, § 2]

Editor's Note — For text of the Mississippi Nonprofit Corporation Act which became effective January 1, 1988, see §§ 79-11-101 et seq.

§ 79-11-39. Repealed.

Repealed by Laws, 1987, ch. 333, § 3, eff from and after January 1, 1988.
[En, Laws, 1976, ch. 333, § 3]

Editor's Note — For text of the Mississippi Nonprofit Corporation Act which became effective January 1, 1988, see §§ 79-11-101 et seq.

§ 79-11-41. Trust funds for church maintenance; election to be subject to provisions of §§ 79-11-41 through 79-11-47; religious society defined.

Any religious society or any organization organized for the purpose of owning, maintaining or operating a church may elect to be subject to the provisions of Sections 79-11-41 through 79-11-47. For the purposes of Sections 79-11-41 through 79-11-47, religious society includes without limitation any church, temple, synagogue, religious congregation, ecclesiastical body or religious denomination.

SOURCES: Laws, 1994, ch. 483, § 1, eff from and after July 1, 1994.

§ 79-11-43. Designation as “perpetual religious society trust funds religious societies.”

All such organizations subject to the provisions of Sections 79-11-41 through 79-11-47 shall be, for the purposes hereof, designated as “perpetual religious society trust fund religious societies.”

SOURCES: Laws, 1994, ch. 483, § 2, eff from and after July 1, 1994.

§ 79-11-45. Operation and establishment of a perpetual religious society trust fund.

(1) Every religious society, subject to the provisions of Sections 79-11-41 through 79-11-47, which is organized, commences or continues to operate in the State of Mississippi after July 1, 1994, and desires to avail itself of the benefits of Sections 79-11-41 through 79-11-47, may provide for the creation and establishment of an irrevocable perpetual religious society trust fund, the principal of which shall permanently remain intact except as hereinafter provided and only the income thereof shall be devoted to the perpetual care of the grounds and buildings of such religious society or which may be used to further the religious purposes of such religious society, and which principal shall be known as the perpetual care fund of such religious society. This fund shall be created and established from funds collected by or donated to the religious society.

(2) The perpetual religious society trust fund shall be permanently set aside in trust to be administered under the jurisdiction of the chancery court of the chancery court district wherein the religious society is located. The chancery courts so having jurisdiction shall have full jurisdiction over the

reports and accounting of trustees, amount of surety bond required, if any, and investment of funds. The courts may waive the surety bond and control of investments in the case of trusts placed with an established bank or corporate trustee. Only the income from such fund shall be used for the care and maintenance or to further the religious purposes of the religious society for which it was established.

SOURCES: Laws, 1994, ch. 483, § 3, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. 2d, Charities §§ 6, 9, 10, 39-41. **CJS.** 77 C.J.S., Religious Societies §§ 82, 83, 89-95.

§ 79-11-47. Accounting and reporting requirements for auditing procedures for certain records.

(1) The provisions of this section shall apply to every religious society that elects to establish and maintain a perpetual religious society trust fund as provided in Section 79-11-45.

(2) Within thirty (30) days after the end of the calendar or its fiscal year, each religious society covered hereunder shall file with the clerk of the chancery court having jurisdiction thereof an annual account, which account shall contain the following information:

(a) The name of the religious society, the date of organization and the location of the religious society;

(b) The amounts paid into the perpetual religious society trust fund, and the income earned therefrom during the preceding fiscal year;

(c) The names and addresses of the officers of the religious society and any change of control which has occurred during the past fiscal or calendar year.

(3) The custodian or trustee of the perpetual religious society trust fund of each religious society shall annually prepare and file with the religious society a detailed accounting and report of such fund on or before March 31 of each year for the calendar year ending the preceding December 31 or within ninety (90) days after the end of the fiscal year of the trust agreement, which report shall include, among other things, properly itemized, the securities in which the monies in the fund are then invested. The accounting and report shall be at all times available to inspection and copy by any member of the religious society at the usual place for transacting the regular affairs of the religious society. Within forty-five (45) days after the time by which the custodian or trustee's accounting and report is required to be filed with the religious society officers, the religious society officers shall file a copy of such accounting and report with the clerk of the chancery court.

(4) As a condition to the transfer of any perpetual religious society trust fund monies from one trustee or trust institution to another, the religious society for which such fund is maintained shall, not less than thirty (30) days

prior to the time when such transfer is to occur, file with the chancery clerk a written notice of intent to transfer accompanied with a letter of intent to receive such trust fund monies from the trustee or trust institution to which such trust fund monies are to be transferred. Such fund monies shall be transferred directly from the existing custodian or trustee to the receiving custodian or trustee.

(5) Each chancery clerk shall maintain a properly indexed book of record in which there shall be kept, preserved and open for public inspection a copy of each record, report and notice required to be filed with the chancery clerk under the provisions of this section. For filing and indexing the records, reports and notices under this section, the chancery clerk shall be authorized to charge such fees as are provided in Section 25-7-9 for the recording and indexing of deeds.

(6) The clerk of the chancery court having jurisdiction shall, upon the failure to timely receive any of the records, reports or notices provided for in this section, immediately give notice by registered letter to the religious society, its officers and directors, at their last known address, that such records, reports or notices have not been received.

(7) Whenever it reasonably appears to the court upon complaint filed with the chancery court having jurisdiction thereof by any religious society member, or the family, legal representative or next of kin of any such member participating in the perpetual care religious society, that (a) such perpetual religious society trust fund is insolvent or about to become insolvent; or (b) no perpetual religious society trust fund has been established for such religious society or, if established, the trust fund does not contain such funds as are required to be contained therein, the court shall order a private audit and examination of any perpetual religious society trust fund of such religious society.

In the event that such audit and examination shows that the perpetual care religious society trust fund is insolvent or is about to become insolvent, or that a sufficient trust fund is not established or being maintained for such perpetual care religious society trust fund, the court shall exercise such jurisdiction and make and issue such orders and decrees as may be necessary to correct and enforce compliance with the provisions of Sections 79-11-41 through 79-11-47 and all such other orders and decrees as shall be just, equitable and in the public interest, including the appointment of receivers to continue or terminate the operation of such perpetual care trust fund of such religious society.

SOURCES: Laws, 1994, ch. 483, § 4, eff from and after July 1, 1994.

CONDUCT OF PRIVATE FOUNDATIONS

SEC.

79-11-51. Prohibited acts.

79-11-53. Distribution of amounts to avoid tax liability.

- 79-11-55. Applicability of Sections 79-11-51 and 79-11-53 when contrary to articles of organization.
- 79-11-57. Amendment of articles of incorporation to exclude application of Sections 79-11-51 and 79-11-53.
- 79-11-59. Rights and powers of courts and attorney general.
- 79-11-61. References to United States Internal Revenue Code.

§ 79-11-51. Prohibited acts.

No corporation which is a "private foundation," as defined in Section 509(a) of the United States Internal Revenue Code shall:

(a) Engage in any act of "self-dealing," as defined in Section 4941(d) of the United States Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4941(a) of the United States Internal Revenue Code;

(b) Retain any "excess business holdings," as defined in Section 4943(c) of the United States Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4943(a) of the United States Internal Revenue Code;

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of Section 4944 of the United States Internal Revenue Code, so as to give rise to any liability for the tax imposed by Section 4944(a) of the United States Internal Revenue Code; and

(d) Make any "taxable expenditures," as defined in Section 4945(d) of the United States Internal Revenue Code which would give rise to any liability for the tax imposed by Section 4945(a) of the United States Internal Revenue Code.

SOURCES: Codes, 1942, § 672-221; Laws, 1972, ch. 440, § 1, eff from and after passage (approved May 4, 1972).

Editor's Note — Laws of 1972, ch. 440, § 6, provides as follows:

"SECTION 6. Because the requirements of the Federal Tax Reform Act of 1969 require charitable nonprofit foundations, whether trusts or corporations, to change their governing instruments to comply with said federal act or the state to adopt legislation which complies in lieu of each trust or corporation changing its instrument and because failure to comply by the deadline set in said federal act will result in the loss of tax exemption by such trusts and corporations, the immediate effectiveness of this act is necessary to relieve nonprofit corporations and trusts of the concern about changing their governing instruments and retaining the tax exempt status for such Mississippi organizations; therefore, this act shall take effect and be in force from and after its passage."

Cross References — Similar provisions applicable to private foundation trusts, charitable trusts, and split-interest trusts, see § 91-9-401.

Federal Aspects — Section 509(a) of the United States Internal Revenue Code, codified as 26 USCS § 509(a).

Sections 4941, 4943-4945 of the United States Internal Revenue Code codified as 26 USCS §§ 4941, 4943-4945.

ATTORNEY GENERAL OPINIONS

Subject to the prohibitions of Sections 79-11-51 and 79-11-53 and the federal statutes, and provided that its articles of incorporation so allow and provide, a Mississippi nonprofit corporation does have

the power and authority to sell its assets and redirect its charitable activities in accordance with the state statutes cited above. Bailey, December 6, 1995, A.G. Op. #95-0692.

RESEARCH REFERENCES

Am Jur. Am Jur Legal Forms 2d, Federal Tax Guide to Legal Forms ¶ 190-N.

§ 79-11-53. Distribution of amounts to avoid tax liability.

Each corporation which is a "private foundation," as defined in Section 509 of the United States Internal Revenue Code shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by Section 4942(a) of the United States Internal Revenue Code.

SOURCES: Codes, 1942, § 672-222; Laws, 1972, ch. 440, § 2, eff from and after passage (approved May 4, 1972).

Cross References — Similar provisions applicable to private foundation trusts, charitable trusts, and split-interest trusts, see § 91-9-403.

Federal Aspects — Section 509 and Section 4942(a) of the United States Internal Revenue Code, codified as 26 USCS § 509 and 26 USCA § 4942(a).

ATTORNEY GENERAL OPINIONS

Subject to the prohibitions of Sections 79-11-51 and 79-11-53 and the federal statutes, and provided that its articles of incorporation so allow and provide, the Mississippi nonprofit corporation does

have the power and authority to sell its assets and redirect its charitable activities in accordance with the state statutes cited above. Bailey, December 6, 1995, A.G. Op. #95-0692.

RESEARCH REFERENCES

Am Jur. Am Jur Legal Forms 2d, Federal Tax Guide to Legal Forms ¶ 190-N.

§ 79-11-55. Applicability of Sections 79-11-51 and 79-11-53 when contrary to articles of organization.

The provisions of Sections 79-11-51 and 79-11-53 shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the articles of organization or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such sections. The corporation shall not be

liable to anyone for any payments made under Section 79-11-53 prior to such determination.

SOURCES: Codes, 1942, § 672-223; Laws, 1972, ch. 440, § 3, eff from and after passage (approved May 4, 1972).

Cross References — Similar provisions applicable to private foundation trusts, charitable trusts, and split-interest trusts, see § 91-9-405.

RESEARCH REFERENCES

Am Jur. Am. Jur. Legal Forms 2d,
Federal Tax Guide to Legal Forms ¶
190-N.

§ 79-11-57. Amendment of articles of incorporation to exclude application of Sections 79-11-51 and 79-11-53.

Any corporation which is a “private foundation” (as defined in Section 509(a) of the United States Internal Revenue Code) may amend its articles of incorporation expressly to exclude the application of Sections 79-11-51 and 79-11-53, or any portion thereof, in the manner provided by Section 79-3-117 or Sections 79-11-101 through 79-11-399, whichever is applicable. The corporation shall not be liable to anyone for any payments made under Section 79-11-53 prior to such amendment.

SOURCES: Codes, 1942, § 672-223; Laws, 1972, ch. 440, § 3; Laws, 1987, ch. 485, § 152, eff from and after January 1, 1988.

Editor’s Note — Former § 79-3-117, referenced in this section was repealed by Laws of 1987, ch. 486, § 17.06 effective from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Business Corporation Law, see § 79-4-10.01 et seq.

Similar provisions applicable to private foundation trusts, charitable trusts, and split-interest trusts, see § 91-9-407.

Federal Aspects — Section 509(a) of the United States Internal Revenue Code, codified as 26 USCS § 509(a).

RESEARCH REFERENCES

Am Jur. Am. Jur. Legal Forms 2d,
Federal Tax Guide to Legal Forms ¶
190-N.

§ 79-11-59. Rights and powers of courts and attorney general.

Nothing in Sections 79-11-51 through 79-11-61 shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

SOURCES: Codes, 1942, § 672-224; Laws, 1972, ch. 440, § 4, eff from and after passage (approved May 4, 1972).

Cross References — Similar provisions applicable to private foundation trusts, charitable trusts, and split-interest trusts, see § 91-9-409.

Office and general powers and duties of attorney general, see Chapter 5 of Title 7.

§ 79-11-61. References to United States Internal Revenue Code.

All references to sections of the United States Internal Revenue Code shall be to such law as it exists as of May 4, 1972.

SOURCES: Codes, 1942, § 672-225; Laws, 1972, ch. 440, § 5, eff from and after passage (approved May 4, 1972).

MISSISSIPPI NONPROFIT CORPORATION ACT

SEC.

- 79-11-101. Short title.
- 79-11-103. Amendments and repeals.
- 79-11-105. Requirements for filing of documents.
- 79-11-107. Secretary may prescribe forms.
- 79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.
- 79-11-111. Effective date of filed documents.
- 79-11-113. Correction of filed documents.
- 79-11-115. Secretary of State to file documents; refusal to file document; filing of documents as ministerial.
- 79-11-117. Appeal of refusal to file document.
- 79-11-119. Certified copy of document as conclusive evidence of filing.
- 79-11-121. Certificate of existence, application for; contents of; conclusive evidence of good standing.
- 79-11-123. Signing false document which is to be filed as offense; penalty.
- 79-11-125. Secretary granted power to perform duties.
- 79-11-127. Definitions.
- 79-11-129. Notice, types; when effective; how addressed.
- 79-11-131. Petition to chancery court for alternative method for calling or conducting meeting of corporation members, delegates, or directors, or for obtaining their consent.
- 79-11-133. Notice to Attorney General of commencement of certain proceedings.
- 79-11-135. Persons who may act as incorporators.
- 79-11-137. Contents of articles of incorporation.
- 79-11-139. When corporate existence begins; filing of articles of incorporation as conclusive proof that conditions of incorporation satisfied.
- 79-11-141. Liability for purporting to act for corporation where incorporation has not occurred.
- 79-11-143. Organizational meeting after incorporation; written consents in lieu of organizational meeting.
- 79-11-145. Bylaws.
- 79-11-147. Emergency bylaws; emergency defined.
- 79-11-149. Activities for which corporations may be organized.
- 79-11-151. Powers of corporation.

NONPROFIT CORPORATIONS

- 79-11-153. Emergency powers of board of directors; notice during emergency; officers may be deemed directors during emergency; effect of emergency corporate action; emergency defined.
- 79-11-155. Challenge to corporation's power to act.
- 79-11-157. Corporate name.
- 79-11-159. Reserving exclusive use of corporate name; transferring reserved corporate name.
- 79-11-161. Registration of foreign corporation's corporate name; renewal of registration of corporate name; transfer of corporate name.
- 79-11-163. Requirement that corporation maintain registered office and registered agent within state.
- 79-11-165. Change of registered office or registered agent of corporation.
- 79-11-167. Resignation of registered agent's agency.
- 79-11-169. Registered agent as agent for service of process, notice, or demand; service upon secretary of corporation at principal office; when service perfected.
- 79-11-171. Admission of person as member of corporation.
- 79-11-173. Consideration for admission of members to corporation.
- 79-11-175. Corporation not required to have members.
- 79-11-177. Rights and obligations of members.
- 79-11-179. Transfer of membership or right arising therefrom.
- 79-11-181. Liability of members for acts, debts, liabilities, or obligations of corporation.
- 79-11-183. Liability of members for dues, assessments or fees.
- 79-11-185. Actions by creditors to reach liability of member to corporation.
- 79-11-187. Resignation of member.
- 79-11-189. Expulsion or suspension of member or termination or suspension of membership.
- 79-11-191. Purchase by corporation of membership of member who resigns or whose membership is terminated.
- 79-11-193. Proceedings brought on behalf of domestic or foreign corporation.
- 79-11-195. Delegates.
- 79-11-197. Annual membership meeting.
- 79-11-199. Special meetings of members.
- 79-11-201. Court-ordered meeting of members.
- 79-11-203. Approval of action by members without holding meeting of members.
- 79-11-205. Notice of meetings of members; notice of adjourned meetings.
- 79-11-207. Waiver of notice requirements by member.
- 79-11-209. Record date.
- 79-11-211. Corporate action taken by ballot without meeting.
- 79-11-213. Preparation of list of members entitled to notice of meeting and members entitled to vote at meeting; list to be open for inspection; court may order inspection and copying of lists.
- 79-11-215. Each member to have one vote.
- 79-11-217. Quorum requirements.
- 79-11-219. Votes required for member action.
- 79-11-221. Voting by proxy.
- 79-11-223. Cumulative voting.
- 79-11-225. Method of election of directors.
- 79-11-227. Acceptance or rejection of vote, consent, waiver or proxy appointment.
- 79-11-229. Voting agreements between members.
- 79-11-231. Board of directors; persons authorized to exercise some or all of powers of board.
- 79-11-233. Qualifications for directors.
- 79-11-235. Number of directors.

CORPORATIONS, ASSOCIATIONS, ETC.

- 79-11-237. Election, appointment or designation of directors.
- 79-11-239. Term of office of directors.
- 79-11-241. Staggering terms of directors.
- 79-11-243. Resignation of director.
- 79-11-245. Removal of directors.
- 79-11-247. Removal of designated director or appointed director.
- 79-11-249. Removal of director by court proceeding.
- 79-11-251. Filling of vacancy in board of directors.
- 79-11-253. Compensation of directors.
- 79-11-255. Meetings of board of directors.
- 79-11-257. Action taken by board of directors without meeting.
- 79-11-259. Notice of regular and special meetings of board of directors.
- 79-11-261. Waiver of notice of meeting of board of directors.
- 79-11-263. Quorum of board of directors; director present at meeting deemed to have assented to action taken; exceptions.
- 79-11-265. Committees of board of directors.
- 79-11-267. Director to act in best interests of corporation; director's reliance upon others for information; liability of directors.
- 79-11-269. Conflict of interest transaction.
- 79-11-270. Liability of director for unlawful distribution.
- 79-11-271. Officers of corporation.
- 79-11-273. Duties of officers.
- 79-11-275. Officers to act in best interests of corporation; reliance upon others for information; liability of officers.
- 79-11-277. Resignation or removal of officer.
- 79-11-279. Contract rights between officer and corporation.
- 79-11-281. Indemnification of director, officer, employee, or agent.
- 79-11-282. Restrictions on corporate loans; borrower's liability.
- 79-11-283. Recordkeeping requirements.
- 79-11-285. Members' right to inspect and copy corporation records; requirements.
- 79-11-287. Conditions on right to inspect; member's agent or attorney has right to inspect and copy records; means of copying records; charges for copying documents by corporation; lists which satisfy demand for record of members.
- 79-11-289. Court-ordered inspection where corporation does not allow member to inspect and copy records.
- 79-11-291. Restrictions on use of membership lists.
- 79-11-293. Authorization for making distributions; conditions for corporation to purchase memberships.
- 79-11-295. Authorization to amend articles of incorporation.
- 79-11-297. Amendment of articles of incorporation prior to corporation's acquisition of members.
- 79-11-299. Amendments to articles of incorporation which may be adopted by board of directors without action by members.
- 79-11-301. Procedures for making amendments to articles of incorporation.
- 79-11-303. Amendments to articles affecting members of class to be voted on by members of such class.
- 79-11-305. Filing of amendments to articles of incorporation.
- 79-11-307. Restatement of articles of incorporation.
- 79-11-309. Amendments to articles of incorporation to carry out court ordered reorganization.
- 79-11-311. Amendments to articles of incorporation not to affect legal status of corporation.
- 79-11-313. Adoption of amendments to bylaws where corporation has no members.
- 79-11-315. Approval of amendments to bylaws where corporation has members.

NONPROFIT CORPORATIONS

- 79-11-317. Amendments to bylaws affecting class of members to be voted on by such class.
- 79-11-319. Plan of merger of corporations.
- 79-11-321. Approval of plan of merger; abandonment of plan of merger.
- 79-11-323. Filing of articles of merger.
- 79-11-325. Effects of merger.
- 79-11-327. Merger of foreign corporation with domestic corporation.
- 79-11-329. Sale, lease, exchange, or other disposition of property in regular course of business; mortgaging or otherwise encumbering property.
- 79-11-331. Sale, lease, exchange, or other disposition of property not in regular course of business.
- 79-11-333. Dissolution by incorporators or directors of corporation that has no members.
- 79-11-335. Approval of dissolution by board of directors or members; notice requirements.
- 79-11-336. Application and distribution of assets of voluntarily dissolving corporation.
- 79-11-337. Contents and filing of articles of dissolution.
- 79-11-339. Revocation of dissolution.
- 79-11-341. Winding up and liquidation.
- 79-11-343. Disposition of known claims against dissolved corporation.
- 79-11-345. Notice of dissolution and request for presentation of claims against corporation; statute of limitations; enforcement of claims.
- 79-11-347. Administrative dissolution by Secretary of State, grounds for.
- 79-11-349. Administrative dissolution, procedures.
- 79-11-351. Reinstatement after administrative dissolution.
- 79-11-353. Denial of application for reinstatement following administrative dissolution; appeals.
- 79-11-355. Dissolution by court order; parties who may bring action; grounds for court-ordered dissolution.
- 79-11-357. Court-ordered dissolution, venue; appropriate party defendants; authority of court with respect to.
- 79-11-359. Issuance of injunctions; appointment of receivers or custodians; application and distribution of corporation assets or proceeds from sale or other disposition.
- 79-11-361. Decree of judicial dissolution.
- 79-11-363. Foreign corporations, authority to transact business; transacting business defined.
- 79-11-365. Foreign corporation transacting business without certificate of authority not to maintain proceeding in any court; stay of proceeding until certificate obtained; penalty for transacting business without certificate of authority.
- 79-11-367. Foreign corporation, application for certificate of authority.
- 79-11-369. Foreign corporation, amended certificate of authority.
- 79-11-371. Effect of certificate of authority.
- 79-11-373. Corporate name of foreign corporation.
- 79-11-375. Registered office and registered agent of foreign corporation.
- 79-11-377. Change of registered office or registered agent of foreign corporation.
- 79-11-379. Resignation of registered agent of foreign corporation.
- 79-11-381. Service of process on foreign corporation.
- 79-11-383. Withdrawal of foreign corporation.
- 79-11-385. Revocation of certificate of authority of foreign corporation, grounds.
- 79-11-387. Issuance of certificate of revocation.
- 79-11-389. Appeal of revocation.
- 79-11-391. Status report of corporation.

- 79-11-393. Rural water companies, special requirements.
- 79-11-394. Rural waterworks corporations; financial reports; contents; notice; failure to file report; notice of annual meeting.
- 79-11-395. Application to pre-existing domestic nonprofit, nonshare corporations.
- 79-11-397. Application to pre-existing foreign corporations authorized to transact business.
- 79-11-399. Effect of repeal of prior statutes.
- 79-11-401. Application to religious corporations.
- 79-11-403. Certain provisions inapplicable to religious corporations; religious doctrine controlling in case of inconsistencies.

§ 79-11-101. Short title.

Section 79-11-101 et seq. shall be known and may be cited as the "Mississippi Nonprofit Corporation Act."

SOURCES: Laws of 1987, ch. 485, § 1, eff from and after January 1, 1988.

Editor's Note — Laws, 1987, ch. 485, § 154, provides as follows:

"SECTION 154. If any provision of this act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Cross References — Power of water, sewer, garbage disposal, or fire protection districts to buy, lease or otherwise acquire assets and facilities of nonprofit corporation organized pursuant to the Mississippi Nonprofit Corporation Act (§§ 79-11-101 et seq.), see § 19-5-181.

Application of Mississippi Nonprofit Corporation Act (§§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

Application to religious corporations, see § 79-11-401.

Use by volunteer fire departments incorporated under the provisions of the nonprofit corporation act of equipment purchased by a county with proceeds of the county volunteer fire department fund, see § 83-1-39.

Domestic mutual insurance holding company powers and compliance with nonprofit private corporation provisions, see § 83-31-149.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations §§ 33-37.

2A Am. Jur. Legal Forms 2d, Associations and Clubs §§ 27:5 et seq. (formation).

CJS. 14 C.J.S., Charities §§ 91, 107, 108.

Law Reviews. Note, Developments in the law: nonprofit corporations. 105 Harv L. Rev. 1579, May 1992.

§ 79-11-103. Amendments and repeals.

The Mississippi Legislature has power to amend or repeal all or part of Section 79-11-101 et seq. at any time and all domestic and foreign corporations subject to Section 79-11-101 et seq. are governed by the amendment or repeal.

SOURCES: Laws, 1987, ch. 485, § 2, eff from and after January 1, 1988.

§ 79-11-105. Requirements for filing of documents.

(1) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(2) Section 79-11-101 et seq. must require or permit filing the document in the office of the Secretary of State.

(3) The document must contain the information required by Section 79-11-101 et seq. It may contain other information as well.

(4) The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form.

(5) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of a foreign corporation need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be signed:

(a) By the presiding officer of its board of directors, its president or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(7) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(a) A corporate seal;

(b) An attestation;

(c) An acknowledgement or verification. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.

(8) If the Secretary of State has prescribed a mandatory form for a document under Section 79-11-107, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission if, to the extent, and in the manner permitted by the Secretary of State. If the document is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document except as otherwise provided in Sections 79-11-167 and 79-11-379.

(10) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee and any franchise tax, license fee or penalty required by Section 79-11-101 et seq. or other law must be paid or provision for payment made in a manner permitted by the Secretary of State.

SOURCES: Laws, 1987, ch. 485, § 3; Laws, 1995, ch. 362, § 2; Laws, 1997, ch. 418, § 42, eff from and after July 1, 1997.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.
Requirements for filing of documents under Mississippi Business Corporation Act, see § 79-4-1.20.
Requirement that Secretary of State file all documents meeting requirements set forth in this section, see § 79-11-115.

§ 79-11-107. Secretary may prescribe forms.

- (1) The Secretary of State may prescribe and furnish, on request, forms for: (a) an application for a certificate of existence; (b) a foreign corporation's application for a certificate of authority to transact business in this state; (c) a foreign corporation's application for a certificate of withdrawal; and (d) the status report. If the Secretary of State so requires, use of these forms is mandatory.
- (2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by Section 79-11-101 et seq., but their use is not mandatory.

SOURCES: Laws, 1987, ch. 485, § 4, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.
Secretary of State may prescribe forms under Mississippi Business Corporation Act, see § 79-4-1.21.
Duties and authority of Secretary of State with respect to nonprofit corporations, see §§ 79-11-107, 79-11-109, 79-11-115, 79-11-125, 79-11-167, 79-11-307, 79-11-347 through 79-11-353, 79-11-379, 79-11-383 through 79-11-387, and 79-11-391.
Requirements for filing documents, see § 79-11-105.

§ 79-11-109. Filing fees; fee for serving process upon Secretary of State; fees for copying and certifying copy of filed document.

(1) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

Document	Fee
(a) Articles of incorporation	\$50.00
(b) Application for use of indistinguishable name	25.00
(c) Application for reserved name	25.00
(d) Notice of transfer of reserved name	25.00
(e) Application for registered name	50.00
(f) Application for renewal of registered name	50.00
(g) Corporation's statement of change of registered agent or registered office or both	10.00
(h) Agent's statement of change of registered office for each affected corporation	10.00
not to exceed a total of	1,000.00

(i) Agent's statement of resignation	No Fee
(j) Amendment of articles of incorporation	50.00
(k) Restatement of articles of incorporation with amendments ...	50.00
(l) Articles of merger	50.00
(m) Articles of dissolution	25.00
(n) Articles of revocation of dissolution	25.00
(o) Certificate of administrative dissolution	No Fee
(p) Application for reinstatement following administrative dissolution	50.00
(q) Certificate of reinstatement	No Fee
(r) Certificate of judicial dissolution	No Fee
(s) Application for certificate of authority	100.00
(t) Application for amended certificate of authority	50.00
(u) Application for certificate of withdrawal	25.00
(v) Certificate of revocation of authority to transact business .	No Fee
(w) Status report	25.00
(x) Articles of correction	50.00
(y) Application for certificate of existence or authorization	25.00
(z) Any other document required or permitted to be filed by Section 79-11-101 et seq.	25.00

(2) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect a fee of Twenty-five Dollars (\$25.00) upon being served with process under Section 79-11-101 et seq. The party to a proceeding causing service of process is entitled to recover the fee paid the Secretary of State as costs if the party prevails in the proceeding.

(3) Except as otherwise provided in subsection (4) of this section, the Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) One Dollar (\$1.00) a page for copying; and
- (b) Ten Dollars (\$10.00) for the certificate.

(4) The Secretary of State may collect a filing fee greater than the fee set forth in subsections (1), (2) and (3) in an amount not to exceed twice the fee set forth in subsections (1), (2) and (3) of processing the filing, if the form prescribed by the Secretary of State for such filing has not been used.

SOURCES: Laws, 1987, ch. 485, § 5; Laws, 1988, ch. 417, § 1; Laws, 1995, ch. 323, § 1, eff from and after July 1, 1995.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Filing fees under Mississippi Business Corporation Act, see § 79-4-1.22.

Applicability of this section to civil penalty a foreign corporation is liable for when it transacts business without certificate of authority, see § 79-11-365.

§ 79-11-111. Effective date of filed documents.

(1) Except as provided in subsection (2) of this section, a document is effective:

(a) At the date and time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing; or

(b) At the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date filed.

(3) Notwithstanding subsections (1) and (2) of this section, any document that has a delayed effective time and date shall not become effective if, prior to the effective time and date, the parties to the document file a certification of cancellation with the Secretary of State.

SOURCES: Laws, 1987, ch. 485, § 6; Laws, 1994, ch. 417, § 4; Laws, 1997, ch. 418, § 43, eff from and after July 1, 1997.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.
Effective date of corporation's filed documents, see § 79-4-1.23.

§ 79-11-113. Correction of filed documents.

(1) A domestic or foreign corporation may correct a document filed by the Secretary of State if (a) the document contains an inaccuracy, or (b) the document was defectively signed, attested, sealed, verified or acknowledged, or (c) the electronic transmission was defective.

(2) A document is corrected:

(a) By preparing articles of correction that: (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the inaccuracy or defect to be corrected, and (iii) correct the inaccuracy or defect; and

(b) By delivering the articles of correction to the office of the Secretary of State for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

SOURCES: Laws, 1987, ch. 485, § 7; Laws, 1997, ch. 418, § 44, eff from and after July 1, 1997.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

§ 79-11-115. Secretary of State to file documents; refusal to file document; filing of documents as ministerial.

(1) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 79-11-105, the Secretary of State shall file it.

(2) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in Sections 79-11-167 and 79-11-379, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgement of the date and time of filing.

(3) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(4) The Secretary of State's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

(a) Affect the validity or invalidity of the document in whole or in part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

SOURCES: Laws, 1987, ch. 485, § 8; Laws, 1997, ch. 418, § 45, eff from and after July 1, 1997.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Duty of Secretary of State to file business corporation documents, refusal to file, see § 79-4-1.25.

§ 79-11-117. Appeal of refusal to file document.

(1) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the chancery court in the county where the corporation's principal office (or, if there is none in this state, its registered office) is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

(2) The court may summarily order the Secretary of State to file the document or take other action the court considered appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 485, § 9, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Appeal from refusal to file business corporation document, see § 79-4-1.26.

§ 79-11-119. Certified copy of document as conclusive evidence of filing.

A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State is conclusive evidence that the original document is on file with the Secretary of State.

SOURCES: Laws, 1987, ch. 485, § 10; Laws, 1997, ch. 418 § 46, eff from and after July 1, 1997.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

§ 79-11-121. Certificate of existence, application for; contents of; conclusive evidence of good standing.

(1) Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic or foreign corporation.

(2) The certificate of existence sets forth:

(a) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation and the period of its duration if less than perpetual; or (ii) that the foreign corporation is authorized to transact business in this state;

(c) That all fees, taxes, and penalties owed to this state have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the good standing of the domestic or foreign corporation;

(d) That its most recent status report required by Section 79-11-391 has been delivered to the Secretary of State;

(e) That articles of dissolution have not been filed; and

(f) Other facts of record in the Office of the Secretary of State that may be requested by the application.

(3) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

SOURCES: Laws, 1987, ch. 485, § 11, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Application for and contents of certificate of existence for corporation, see § 79-4-1.28.

Filing fees, see § 79-11-109.

§ 79-11-123. Signing false document which is to be filed as offense; penalty.

(1) A person commits an offense by signing a document such person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(2) An offense under this section is a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00).

SOURCES: Laws, 1987, ch. 485, § 12, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Penalty for signing false document, corporations, see § 79-4-1.29.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 79-11-125. Secretary granted power to perform duties.

The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State's office by Section 79-11-101 et seq.

SOURCES: Laws, 1987, ch. 485, § 13, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

§ 79-11-127. Definitions.

Unless the context otherwise requires in Section 79-11-101 et seq., the following terms shall have the meaning ascribed herein:

(a) "Approved by (or approval by) the members" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot or written consent in conformity with Section 79-11-101 et seq. or by the affirmative vote, written ballot or written consent of such greater proportion, including the votes of all the members of any class, unit or grouping as may be provided in the articles, bylaws or Section 79-11-101 et seq. for any specified member action.

(b) "Articles of incorporation" or "articles" include amended and re-stated articles of incorporation and articles of merger.

(c) "Board" or "board of directors" means the board of directors except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to Section 79-11-231.

(d) "Bylaws" means the code or codes of rules (other than the articles) adopted pursuant to Section 79-11-101 et seq. for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(e) "Class" means a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For the pur-

poses of this section, rights shall be considered the same if they are determined by a formula applied uniformly.

(f) "Corporation" means a nonprofit corporation subject to the provisions of Section 79-11-101 et seq., except a foreign corporation.

(g) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(h) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(i) "Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board.

(j) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers.

(k) "Domestic corporation" means a corporation.

(l) "Effective date of notice" is defined in Section 79-11-129.

(m) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(n) "Employee" includes an officer but not a director. A director may accept duties that make the director an employee.

(o) "Entity" includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, trust and two (2) or more persons having a joint or common economic interest; and state, United States and foreign government.

(p) "File," "filed" or "filing" means filed in the office of the Secretary of State.

(q) "Foreign corporation" means a corporation organized under a law other than the law of this state which would be a nonprofit corporation if formed under the laws of this state.

(r) "Governmental subdivision" includes authority, county, district and municipality.

(s) "Includes" denotes a partial definition.

(t) "Individual" includes the estate of an incompetent individual.

(u) "Means" denotes a complete definition.

(v) "Member" means (without regard to what a person is called in the articles or bylaws) any person or persons who on more than one (1) occasion, pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

A person is not a member by virtue of any of the following:

(i) Any rights such person has as a delegate;

(ii) Any rights such person has to designate a director or directors; or

(iii) Any rights such person has as a director.

(w) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws and Section 79-11-101 et seq.

(x) "Notice" is defined in Section 79-11-129.

(y) "Person" includes any individual or entity.

(z) "Principal office" means the office (in or out of this state) where the principal executive offices of a domestic or foreign corporation are located.

(aa) "Proceeding" includes civil suit and criminal, administrative and investigatory action.

(bb) "Record date" means the date established under Section 79-11-209 on which a corporation determines the identity of its members for the purposes of Section 79-11-101 et seq.

(cc) "Religious corporation" means a corporation organized and operating primarily or exclusively for religious purposes.

(dd) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under Section 79-11-273 for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(ee) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

(ff) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States.

(gg) "United States" includes district, authority, bureau, commission, department and any other agency of the United States.

(hh) "Vote" includes authorization by written ballot and written consent.

(ii) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

SOURCES: Laws, 1987, ch. 485, § 14; Laws, 1997, ch. 418, § 47, eff from and after July 1, 1997.

JUDICIAL DECISIONS

1. Corporate member.

Citizens who intervened after a city's case against a non-profit corporation for negligent entrustment of trust properties was dismissed also lacked standing to pursue the claims regarding the corporation's sale of a hospital to a for-profit

corporation because under Miss. Code Ann. § 79-11-155, the citizens were not corporate members under Miss. Code Ann. § 79-11-127, nor was the action pursued in the name of the State. *City of Picayune v. Southern Reg'l Corp.*, 916 So. 2d 510 (Miss. 2005).

ATTORNEY GENERAL OPINIONS

A community hospital board of trustees would have authority to cause to be incorporated a nonprofit foundation to solicit contributions and raise funds to support the hospital and its activities, but would be subject to the prohibitions against having any financial interest in the foundation; since such boards are entities and persons authorized to act as incorporators of Mississippi nonprofit corporations, a board would be authorized to act as an incorporator of a nonprofit foundation which would solicit contributions to support hospital activities. O'Donnell, March 27, 1998, A.G. Op. #98-0169.

A community hospital may act as the sole member of a Mississippi nonprofit

corporation engaged in the delivery of health care services, including ambulatory surgery services, to the citizens of its service area. Williamson, May 22, 1998, A.G. Op. #98-0269.

For purposes of creating a nonprofit corporation, a county is an "entity" within the meaning of subsection (o) of this section, and is therefore a "person" within the meaning of subsection (y) of this section; thus, a county qualifies as a "member" pursuant to subsection (v) of this section and may serve as a member of a nonprofit corporation as permitted by § 79-11-175. Griffith, July 23, 1999, A.G. Op. #99-0370.

§ 79-11-129. Notice, types; when effective; how addressed.

(1) Notice may be oral or written. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television or other form of public broadcast communication.

(3) Oral notice is effective when communicated if communicated in a comprehensible manner.

(4) Written notice by a domestic or foreign corporation to a member, if in a comprehensible form, is effective (i) upon deposit in the United States mail, if mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of membership, or (ii) when electronically transmitted to the member in a manner authorized by the member.

(5) Except as provided in subsection (4) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

(7) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the

corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members, at the address appearing on the current list of members.

(8) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in this state), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent status report or, in the case of a foreign corporation that has not yet delivered a status report, in its application for a certificate of authority.

(9) If Section 79-11-205 or any other provision of Section 79-11-101 et seq. prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of Section 79-11-101 et seq., those requirements govern.

SOURCES: Laws, 1987, ch. 485, § 15; Laws, 1997, ch. 418, § 48, eff from and after July 1, 1997.

Cross References — Notice under the Mississippi Business Corporation Act, see § 79-4-1.41.

Applicability of this section to definition of "effective date of notice" for purposes of Mississippi Nonprofit Corporation Act, see § 79-11-127.

§ 79-11-131. Petition to chancery court for alternative method for calling or conducting meeting of corporation members, delegates, or directors, or for obtaining their consent.

(1) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws or Section 79-11-101 et seq., then upon petition of a director, officer, delegate, member or the Attorney General, the chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized in such a manner as the court finds fair and equitable under the circumstances.

(2) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and Section 79-11-101 et seq., whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of

votes needed for approval, that would otherwise be imposed by the articles, bylaws or Section 79-11-101 et seq.

(4) Whenever practical any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger or sale of assets.

(5) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the force and effect as if it complied with every requirement imposed by the articles, bylaws and Section 79-11-101 et seq.

SOURCES: Laws, 1987, ch. 485, § 16, eff from and after January 1, 1988.

Cross References — Attorney General generally, see §§ 7-5-1 et seq.

JUDICIAL DECISIONS

1. Authority to order election.

Chancery court had the authority to order a congregational church to compile a list of qualified voters and hold an election to decide whether to retain its pastor, as the church's bylaws did not provide a

means for resolving the dispute; and the court merely established a procedure for voting and did not decide an ecclesiastical issue. *Pilgrim Rest Missionary Baptist Church v. Wallace*, 835 So. 2d 67 (Miss. 2003).

§ 79-11-133. Notice to Attorney General of commencement of certain proceedings.

(1) The Attorney General shall be given notice of the commencement of any proceeding which Section 79-11-101 et seq. authorize the Attorney General to bring but which has been commenced by another person.

(2) Whenever any provision of Section 79-11-101 et seq. requires that notice be given to the Attorney General or permits the Attorney General to commence a proceeding:

(a) If no proceeding has been commenced, the Attorney General may take appropriate action including, but not limited to, seeking injunctive relief.

(b) If a proceeding has been commenced by a person other than the Attorney General, the Attorney General, as of right, may intervene in such proceeding.

SOURCES: Laws, 1987, ch. 485, § 17, eff from and after January 1, 1988.

Cross References — Attorney General generally, see §§ 7-5-1 et seq.
Application to religious corporations, see § 79-11-403.

§ 79-11-135. Persons who may act as incorporators.

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

SOURCES: Laws, 1987, ch. 485, § 18, eff from and after January 1, 1988.

Cross References -- Secretary of State generally, see §§ 7-3-1 et seq.
Incorporators under Mississippi Business Corporation Act, see § 79-4-2.01.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 91.

§ 79-11-137. Contents of articles of incorporation.

(1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of Section 79-11-157;

(b) The period of duration, which may be perpetual;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and

(d) The name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) The names and addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting and regulating the powers of the corporation, its board of directors and members; and

(c) Any provision that under Sections 79-11-101 et seq. is required or permitted to be set forth in the bylaws.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in Sections 79-11-101 et seq.

SOURCES: Laws, 1987, ch. 485, § 19, eff from and after January 1, 1988.

Cross References — Articles of incorporation under Mississippi Business Corporation Act, see § 79-4-2.02.

Filing fees, see § 79-11-109.

Purposes for which nonprofit corporation may be organized, see § 79-11-149.

General powers of corporation, see § 79-11-151.

Restrictions on corporate names, see § 79-11-157.

Applicability of this section to amendment of articles of incorporation to carry out plan of court ordered reorganization, see § 79-11-309.

Amendments to articles of incorporation, see §§ 79-11-295 through 79-11-311.

Obtaining articles of incorporation through fraud as grounds for judicial dissolution, see § 79-11-355.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-1.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-1.

11. In general.

A landowner who willfully purchases property subject to control of residential property owners association and derives benefits from membership implies his consent to be charged assessment and dues common to all other members, and the provisions of Mississippi Code § 79-11-1(2)(g), requiring non-profit corporations to make expulsion the only remedy for non-payment of dues, were not controlling. *Perry v. Bridgetown Community Ass'n*, 486 So. 2d 1230 (Miss. 1986).

It is the duty of state officials to act without unreasonable delays on applications either for charter amendments or for new charters, and if such action is unduly delayed or arbitrarily or discriminatorily made, the doors may be opened to federal jurisdiction. *Williams v. Tri-County Community Ctr.*, 323 F. Supp. 286 (S.D. Miss. 1971), *aff'd*, 452 F.2d 221 (5th Cir. 1971).

Where quo warranto proceedings were brought seeking forfeiture of a nonprofit corporation's franchises and privileges on the ground that such corporation, which operated programs providing services for

poor people in certain counties in Mississippi, and which had received a federal grant for a health care delivery program, had exceeded its corporate powers, and such proceedings were removed to federal court, allegations of the corporation that state officials had refused to act on proposed amendments to its charter that set forth the powers of the corporation to operate a health services program and on an application of the health center for a charter as a nonprofit, nonstock corporation, did not preclude remand of the case, but if the state court should fail to give relief on this issue and if the action by state officials should be unduly delayed or arbitrarily or discriminatorily named, the doors would then be open to federal jurisdiction. *Williams v. Tri-County Community Ctr.*, 323 F. Supp. 286 (S.D. Miss. 1971), *aff'd*, 452 F.2d 221 (5th Cir. 1971).

Code 1942, § 5310.1, as formerly enacted, which gave to the governor unlimited discretion to deny a charter to a non-profit corporation was unconstitutional for the reason that it conferred an absolute and arbitrary discretion in a state official to grant or deny a right or privilege. *Smith v. Ladner*, 288 F. Supp. 66 (S.D. Miss. 1968).

This section [Code 1942, § 5310.1] has no application to foreign corporations seeking domestication in Mississippi, but applies only to persons seeking an original state charter. *NAACP v. Thompson*, 357 F.2d 831 (5th Cir. 1966), *cert. denied*, 385 U.S. 820, 87 S. Ct. 45, 17 L. Ed. 2d 58 (1966).

ATTORNEY GENERAL OPINIONS

A nonprofit corporation may provide either in the articles of incorporation or its bylaws the method for appointment or election of directors, which may include

some manner of appointment by specified individuals. *Williamson*, Feb. 4, 2000, A.G. Op. #99-0674.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. 2d, Charities §§ 172, 177 and 178.

18 Am. Jur. 2d, Corporations § 37.

18A Am. Jur. 2d, Corporations §§ 166, 174.

4 Am. Jur. Legal Forms 2d, Charities §§ 55:144, 55:145.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:804 et seq.

CJS. 14 C.J.S., Charities § 91.

§ 79-11-139. When corporate existence begins; filing of articles of incorporation as conclusive proof that conditions of incorporation satisfied.

(1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

SOURCES: Laws, 1987, ch. 485, § 20, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.
Incorporation under Mississippi Business Corporation Act, see § 79-4-2.03.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-5.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-5.

11. In general.

Creditor who participated in bankruptcy proceedings in which debtor petitioned as corporation held precluded from suing incorporators as partners. *Natalbany Lumber Co. v. Countiss*, 134 Miss. 511, 99 So. 262 (1924).

The requirement of this section [Code 1942, § 5320] as to report of organization may be dispensed with by law passed after corporation has failed to comply with its provisions. *Southern Coal Co. v. Yazoo Ice & Coal Co.*, 118 Miss. 860, 80 So. 334 (1919).

Law authorizing corporation to file report of organization after time limited by

this section [Code 1942, § 5320] held not to violate Const. § 180. *Southern Coal Co. v. Yazoo Ice & Coal Co.*, 118 Miss. 860, 80 So. 334 (1919).

Stockholders including one purchasing stock in the corporation after it had lost its right to do business for failure to report organization held to have done business under the charter within this section [Code 1942, § 5320]. *Hessig-Ellis Drug Co. v. Wilkerson*, 115 Miss. 668, 76 So. 570 (1917).

Incorporators must see that their report is received as required by statute. *Ragland v. Doolittle*, 100 Miss. 498, 56 So. 445 (1911).

Corporation held liable where only report of incorporators shows on its face that it had been organized and doing business several months before the report was made. *Ragland v. Doolittle*, 100 Miss. 498, 56 So. 445 (1911).

Creditors doing business with void corporation held not estopped from setting up liability of incorporators as partners. *Ragland v. Doolittle*, 100 Miss. 498, 56 So. 445 (1911).

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations
§§ 182-183.

CJS. 14 C.J.S., Charities § 91.

§ 79-11-141. Liability for purporting to act for corporation where incorporation has not occurred.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under Section 79-11-101 et seq., are jointly and severally liable for all liabilities created while so acting.

SOURCES: Laws, 1987, ch. 485, § 21, eff from and after January 1, 1988.

Cross References — Liability for purporting to act for corporation prior to incorporation under Mississippi Business Corporation Act, see § 79-4-2.04.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 91.

§ 79-11-143. Organizational meeting after incorporation; written consents in lieu of organizational meeting.

(1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation;

or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by Section 79-11-101 et seq. to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

SOURCES: Laws, 1987, ch. 485, § 22, eff from and after January 1, 1988.

Cross References — Organizational meeting after incorporation under Mississippi Business Corporation Act, see § 79-4-2.05.

Amendments to corporate bylaws, see §§ 79-11-313 through 79-11-317.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 575, 615, 774, 781. tions §§ 74:984, 74:1001-74:1004, 74:1021.
 6 Am. Jur. Legal Forms 2d, Corpora-

§ 79-11-145. Bylaws.

(1) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(2) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

SOURCES: Laws, 1987, ch. 485, § 23, eff from and after January 1, 1988.

Cross References — Bylaws under Mississippi Business Corporation Act, see § 79-4-2.06.

RESEARCH REFERENCES

Am Jur. 2A Am. Jur. Legal Forms 2d, Associations and Clubs §§ 27:46, 27:52 et seq.

§ 79-11-147. Emergency bylaws; emergency defined.

(1) Unless the articles provide otherwise, the directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

- (a) How to call a meeting of the board;
- (b) Quorum requirements for the meeting; and
- (c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

- (a) Binds the corporation; and
- (b) May not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

SOURCES: Laws, 1987, ch. 485, § 24, eff from and after January 1, 1988.

Cross References — Emergency bylaws under Mississippi Business Corporation Act, see § 79-4-2.07.

§ 79-11-149. Activities for which corporations may be organized.

Corporations may be organized under Section 79-11-101 et seq. for any lawful activity. A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under Section 79-11-101 et seq. only if permitted by, and subject to all limitations of, the other statute.

SOURCES: Laws, 1987, ch. 485, § 25, eff from and after January 1, 1988.

Cross References — Purposes for which corporations may be organized under Mississippi Business Corporation Act, see § 79-4-3.01.

Restrictions on corporate names, see § 79-11-157.

RESEARCH REFERENCES

<p>ALR. Nonprofit purposes and character which warrant creation of nonprofit corporation. 16 A.L.R.2d 1345.</p>	<p>Am Jur. 15 Am. Jur. 2d, Charities §§ 180, 181.</p> <p>CJS. 14 C.J.S., Charities §§ 72, 73.</p>
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§ 79-11-151. Powers of corporation.

Each corporation shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized including, without limitation, power:

- (a) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.
- (b) To sue and be sued, complain and defend, in its corporate name.
- (c) To have a corporate seal which may be altered at will, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (d) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
- (e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (f) To lend money to its employees other than its officers and directors and otherwise assist its employees, officers and directors.
- (g) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether business or nonprofit, associations, partnerships or individuals, or direct or indirect

obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(h) To make contracts and guarantees, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income, and make contracts of guaranty and suretyship.

(i) To lend money for its corporate purposes, invest and reinvest its funds and take and hold real and personal property as security for the payment of funds so lent or invested.

(j) To conduct its affairs, carry on its operations and have offices and exercise the powers granted by Section 79-11-101 et seq. in any state, territory, district or possession of the United States or in any foreign country.

(k) To elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation.

(l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(m) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes.

(n) To pay pensions and establish pension plans or pension trusts for any or all of its directors, officers and employees.

(o) To cease its corporate activities and surrender its corporate franchise.

(p) To impose dues, assessments, admission and transfer fees upon its members.

(q) To establish conditions for admission to membership, admit members and issue memberships.

(r) To carry on a business.

(s) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

SOURCES: Laws, 1987, ch. 485, § 26; Laws, 1997, ch. 418, § 54, eff from and after July 1, 1997.

Cross References — Power of water, sewer, garbage disposal, or fire protection districts to buy, lease or otherwise acquire assets and facilities of nonprofit corporation organized pursuant to the Mississippi Nonprofit Corporation Act (§§ 79-11-101 et seq.), see § 19-5-181.

General powers of corporation under Mississippi Business Corporation Act, see § 79-4-3.02.

Lack of necessity of setting forth the powers enumerated in this section in the articles of incorporation, see § 79-11-137.

Liability of director for unlawful distribution, see § 79-11-270.

Effect of merger on the title to real estate and other property, see § 79-11-325.

Effect of dissolution on the title to corporation's property, see § 79-11-341.

RESEARCH REFERENCES

ALR. Nonprofit charitable institutions as within operation of labor statutes. 26 A.L.R.2d 1020.

Power of a business corporation to donate to a charitable or similar institution. 39 A.L.R.2d 1192.

Distribution of funds by nonprofit corporation absent dissolution. 51 A.L.R.3d 1318.

Liability of charitable organization under respondeat superior doctrine for tort of unpaid volunteer. 82 A.L.R.3d 1213.

Am Jur. 15 Am. Jur. 2d, Charities §§ 180, 183.

18B Am. Jur. 2d, Corporations § 1718.

19 Am. Jur. 2d, Corporations § 2397.

CJS. 14 C.J.S., Charities §§ 72, 73.

Law Reviews. Note, Developments in the law: nonprofit corporations. 105 Harv L. Rev. 1579, May 1992.

§ 79-11-153. Emergency powers of board of directors; notice during emergency; officers may be deemed directors during emergency; effect of emergency corporate action; emergency defined.

(1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

SOURCES: Laws, 1987, ch. 485, § 27, eff from and after January 1, 1988.

Cross References — Liability of director for unlawful distribution, see § 79-11-270.

§ 79-11-155. Challenge to corporation's power to act.

(1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director or by a member or members in a derivative proceeding.

(3) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver or by a trustee or other legal representative.

SOURCES: Laws, 1987, ch. 485, § 28, eff from and after January 1, 1988.

Cross References — Attorney General generally, see §§ 7-5-1 et seq.

Challenge to corporation's power to act under Mississippi Business Corporation Act, see § 79-4-3.04.

JUDICIAL DECISIONS**1. Corporate member.**

Citizens who intervened after a city's case against a non-profit corporation for negligent entrustment of trust properties was dismissed also lacked standing to pursue the claims regarding the corporation's sale of a hospital to a for-profit

corporation because under Miss. Code Ann. § 79-11-155, the citizens were not corporate members under Miss. Code Ann. § 79-11-127, nor was the action pursued in name of the State. *City of Pica-yune v. Southern Reg'l Corp.*, 916 So. 2d 510 (Miss. 2005).

§ 79-11-157. Corporate name.

(1) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 79-11-149 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable upon the records of the Secretary of State from:

(a) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) A corporate name reserved or registered under Sections 79-11-159, 79-11-161, 79-4-4.02 or 79-4-4.03; or

(c) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable.

(3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one or more of the names described in subsection (2). The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) Has merged with the other corporation;

(b) Has been formed by reorganization of the other corporation; or

(c) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) Section 79-11-101 et seq. do not control the use of fictitious names.

SOURCES: Laws, 1987, ch. 485, § 29; Laws, 1988, ch. 417, § 2, eff from and after July 1, 1988.

Cross References — Corporate name under Mississippi Business Corporation Act, see § 79-4-4.01.

Applicability of this section to the information which must be set forth in the articles of incorporation, see § 79-11-137.

Amendment changing corporation's name does not abate proceedings brought by or against the corporation in its former name, see § 79-11-311.

Applicability of this section to corporation's application for reinstatement after administrative dissolution, see § 79-11-351.

Effect of name of foreign corporation not satisfying requirements of this section, see § 79-11-373.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-7.

11. Applicability.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-7.

11. Applicability.

This provision does not apply in the case

of cooperative associations. *Staple Cotton Coop. Ass'n v. Federal Staple Cotton Coop. Ass'n*, 249 Miss. 465, 162 So. 2d 867, 141 U.S.P.Q. 538 (1964).

RESEARCH REFERENCES

ALR. Right of benevolent or fraternal society or organization to protection against use of same or similar name, insignia, or ritual by another organization. 76 A.L.R.2d 1396.

Right to protection of corporate name, as between domestic corporation and foreign corporation not qualified to do business in state. 26 A.L.R.3d 994.

Right of charitable or religious association or corporation to protection against

use of same or similar name by another. 37 A.L.R.3d 277.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 240, 241, 244.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 1-14.

Law Reviews. Walker, Common law protection of economic expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March, 1979.

§ 79-11-159. Reserving exclusive use of corporate name; transferring reserved corporate name.

(1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. Upon finding that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable period of one hundred eighty (180) days.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

SOURCES: Laws, 1987, ch. 485, § 30, eff from and after January 1, 1988.

Cross References. — Secretary of State generally, see §§ 7-3-1 et seq.

Reserving exclusive use of corporate name under Mississippi Business Corporation Act, see § 79-4-4.02.

Filing Fees, see § 79-11-109.

Restrictions on corporate names, see § 79-11-157.

Applicability of this section to the registration of the name of a foreign corporation, see § 79-11-161.

Applicability of this section to requirements for corporate name of foreign corporation, see § 79-11-373.

RESEARCH REFERENCES

ALR. Right of benevolent or fraternal society or organization to protection against use of same or similar name, insignia, or ritual by another organization. 76 A.L.R.2d 1396.

Right to protection of corporate name, as between domestic corporation and foreign corporation not qualified to do business in state. 26 A.L.R.3d 994.

Right of charitable or religious association or corporation to protection against

use of same or similar name by another. 37 A.L.R.3d 277.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 240, 241, 244.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 1-14.

Law Reviews. Walker, Common law protection of economic expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March, 1979.

§ 79-11-161. Registration of foreign corporation's corporate name; renewal of registration of corporate name; transfer of corporate name.

(1) A foreign corporation may register its corporate name, or its corporate name with any addition required by Section 79-11-373, if the name is distinguishable upon the records of the Secretary of State from:

(a) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) A corporate name reserved under Section 79-11-159 or pursuant to the provisions of the Mississippi Business Corporation Act, or registered under this section.

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by Section 79-11-373, by delivering to the Secretary of State an application:

(a) Setting forth its corporate name, or its corporate name with any addition required by Section 79-11-373, the state or country and date of its incorporation and a brief description of the nature of the activities in which it is engaged; and

(b) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use upon the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under Section 79-11-101 et seq. or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

SOURCES: Laws, 1987, ch. 485, § 31, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq.

Registration of foreign corporation's corporate name under Mississippi Business Corporation Act, see § 79-4-4.03.

Restrictions on corporate names, see § 79-11-157.

Applicability of this section to requirements for corporate name of foreign corporation, see § 79-11-373.

RESEARCH REFERENCES

ALR. Right of benevolent or fraternal society or organization to protection against use of same or similar name, insignia, or ritual by another organization. 76 A.L.R.2d 1396.

Right to protection of corporate name, as between domestic corporation and foreign corporation not qualified to do business in state. 26 A.L.R.3d 994.

Right of charitable or religious association or corporation to protection against use of same or similar name by another. 37 A.L.R.3d 277.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 240, 241, 244.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 1-14.

Lawyers' Edition. State venue provisions for civil actions as violating equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 119 L. Ed. 2d 665.

Law Reviews. Walker, Common law protection of economic expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March, 1979.

§ 79-11-163. Requirement that corporation maintain registered office and registered agent within state.

Each corporation must continuously maintain in this state:

- (a) A registered office that may be the same as its principal office; and
- (b) A registered agent, who may be:
 - (i) An individual who resides in this state and whose principal office is identical with the registered office;
 - (ii) A domestic corporation or domestic business corporation whose principal office is identical with the registered office;
 - (iii) A foreign corporation or foreign business corporation authorized to transact business or to conduct affairs in this state whose principal office is identical with the registered office; or
 - (iv) A resident agent designated prior to January 1, 1988.

SOURCES: Laws, 1987, ch. 485, § 32; Laws, 1988, ch. 417, § 3, eff from and after July 1, 1988.

Cross References — Requirement that corporation maintain registered office and registered agent under Mississippi Business Corporation Act, see § 79-4-5.01.

Authority of registered agent not terminated by voluntary dissolution, see § 79-11-341.

Authority of registered agent not terminated by administrative dissolution, see § 79-11-349.

Authority of registered agent not terminated by revocation of foreign corporation's certificate of authority, see § 79-11-387.

JUDICIAL DECISIONS

I. Under Current Law.

II. Under Former § 79-11-3.

1.-10. [Reserved for future use.]

11. in general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-3.

11. in general.

Service of process on a foreign corporation's statutory agent does not confer jurisdiction of an action by a nonresident or a cause of action accruing in another state. *Stavang v. American Potash & Chem. Corp.*, 227 F. Supp. 786 (S.D. Miss. 1964), *aff'd*, 344 F.2d 117 (5th Cir. 1965).

A foreign corporation which has never qualified to do business in Mississippi is not precluded from suing there on a policy of liability insurance issued to it in another state, in respect of a judgment recovered against it in Mississippi after its

withdrawal from the state for negligence in the performance of services there. *Aerial Agric. Serv. of Mont., Inc. v. Till*, 207 F. Supp. 50 (N.D. Miss. 1962).

The right given to a state chartered savings and loan association by Code 1942, § 5319, prior to the 1962 amendment, to choose or elect to maintain an office in the county of its domicile was one which the board of savings and loan associations could not impair or modify in a proceeding to prevent the savings and loan association from changing the location of its home office from one city to another within the state. *North Miss. Sav. & Loan Ass'n v. Confederate States Sav. & Loan Ass'n*, 250 Miss. 463, 166 So. 2d 119 (1964).

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agency § 343.

5 Am. Jur. 2d, Appearance § 10.

18A Am. Jur. 2d, Corporations § 174.

§ 79-11-165. Change of registered office or registered agent of corporation.

(1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (a) The name of the corporation;
- (b) The street address of its current registered office;
- (c) If the current registered office is to be changed, the street address of the new registered office;
- (d) The name of its current registered agent;
- (e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (f) A representation that after the change or changes are made, the street addresses of its registered office and the principal office of its registered agent will be identical.

(2) If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

SOURCES: Laws, 1987, ch. 485, § 33, *eff* from and after January 1, 1988.

Cross References — Change of registered name under Mississippi Business Corporation Act, see § 79-4-5.02.

Filing fees, see § 79-11-109.

§ 79-11-167. Resignation of registered agent's agency.

(1) A registered agent may resign his agency appointment by signing and delivering to the Secretary of State for filing the signed original and two (2) exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the Secretary of State shall mail one (1) copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

SOURCES: Laws, 1987, ch. 485, § 34, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Resignation of registered agent under Mississippi Business Corporation Act, see § 79-4-5.03.

Requirements for filing documents, see § 79-11-105.

Filing fees, see § 79-11-109.

Obligations of Secretary of State with respect to filing of documents, see § 79-11-115.

§ 79-11-169. Registered agent as agent for service of process, notice, or demand; service upon secretary of corporation at principal office; when service perfected.

(1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

(a) The date the corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the corporation; or

(c) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(3) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

SOURCES: Laws, 1987, ch. 485, § 35, eff from and after January 1, 1988.

Cross References — Service on corporation under Mississippi Business Corporation Act, see § 79-4-5.04.

Authority of registered agent not terminated by dissolution of corporation, see § 79-11-341.

Written notice by Secretary of State of administrative dissolution of corporation, see § 79-11-349.

Notice of denial of reinstatement following administrative dissolution by Secretary of State, see § 79-11-353.

RESEARCH REFERENCES

ALR. Federal or state law as controlling, in diversity action, whether foreign corporation is amenable to service of process in state. 6 A.L.R.3d 1103.

Am Jur. 3 Am. Jur. 2d, Agency § 343.
5 Am. Jur. 2d, Appearance § 10.

§ 79-11-171. Admission of person as member of corporation.

(1) A corporation may admit any person as a member. The articles or bylaws may establish criteria or procedures for admission.

(2) No person shall be admitted as a member without his or her consent.

SOURCES: Laws, 1987, ch. 485, § 36, eff from and after January 1, 1988.

ATTORNEY GENERAL OPINIONS

A community hospital may act as the sole member of a Mississippi nonprofit corporation engaged in the delivery of health care services, including ambula-

tory surgery services, to the citizens of its service area. Williamson, May 22, 1998, A.G. Op. #98-0269.

RESEARCH REFERENCES

ALR. Suspension or expulsion from professional association and the remedies therefor. 20 A.L.R.2d 531.

Right to damages for exclusion from membership in social or fraternal organization. 59 A.L.R.2d 1290.

Compelling admission to membership in professional association or society. 89 A.L.R.2d 964.

Exclusion or expulsion from association or club as violation of state civil rights act. 38 A.L.R.4th 628.

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations §§ 74:1001-74:1004.

CJS. 14 C.J.S., Charities § 91.

§ 79-11-173. Consideration for admission of members to corporation.

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

SOURCES: Laws, 1987, ch. 485, § 37, eff from and after January 1, 1988.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 91.

§ 79-11-175. Corporation not required to have members.

A corporation is not required to have members.

SOURCES: Laws, 1987, ch. 485, § 38, eff from and after January 1, 1988.

ATTORNEY GENERAL OPINIONS

A community hospital may act as the sole member of a Mississippi nonprofit corporation engaged in the delivery of health care services, including ambulatory surgery services, to the citizens of its service area. Williamson, May 22, 1998, A.G. Op. #98-0269.

For purposes of creating a nonprofit corporation, a county is an "entity" within

the meaning of § 79-11-127(o), and is therefore a "person" within the meaning of § 79-11-127(y); thus, a county qualifies as a "member" pursuant to § 79-11-127(v) and may serve as a member of a nonprofit corporation as permitted by § 79-11-175. Griffith, July 23, 1999, A.G. Op. #99-0370.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 91.

§ 79-11-177. Rights and obligations of members.

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

SOURCES: Laws, 1987, ch. 485, § 39, eff from and after January 1, 1988.

JUDICIAL DECISIONS

1. Illustrative cases.

The assessment of security fees against owners of improved lots in an association did not violate the statute since owners of improved lots were more likely to use and need the benefits of security than owners

of unimproved parcels of land and the distinction did not affect the other rights or obligations of the members in any way. Longanecker v. Diamondhead Country Club, 760 So. 2d 764 (Miss. 2000).

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 91.

§ 79-11-179. Transfer of membership or right arising therefrom.

(1) Except as set forth or authorized by the articles or bylaws, no member of a corporation may transfer a membership or any right arising therefrom.

(2) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

SOURCES: Laws, 1987, ch. 485, § 40, eff from and after January 1, 1988.

§ 79-11-181. Liability of members for acts, debts, liabilities, or obligations of corporation.

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

SOURCES: Laws, 1987, ch. 485, § 41, eff from and after January 1, 1988.

RESEARCH REFERENCES

<p>Am Jur. 18 Am. Jur. 2d, Corporations § 50. 7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 43.1 (complaint, petition,</p>	<p>or declaration — to collect on corporate debt-corporation the alter ego of individual). CJS. 14 C.J.S., Charities §§ 73-75.</p>
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§ 79-11-183. Liability of members for dues, assessments or fees.

A member may become liable to the corporation for dues, assessments or fees; provided, however, that an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.

SOURCES: Laws, 1987, ch. 485, § 42, eff from and after January 1, 1988.

§ 79-11-185. Actions by creditors to reach liability of member to corporation.

(1) No proceeding may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

(2) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (1) of this section to reach and apply unpaid amounts due the

corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

SOURCES: Laws, 1987, ch. 485, § 43, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations § 50. or declaration — to collect on corporate debt-corporation the alter ego of individual).
7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 43.1 (complaint, petition,

§ 79-11-187. Resignation of member.

(1) A member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the corporation.

SOURCES: Laws, 1987, ch. 485, § 44, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 776.
 19 Am. Jur. 2d, Corporations § 2354.

§ 79-11-189. Expulsion or suspension of member or termination or suspension of membership.

(1) No member may be expelled or suspended, and no membership or memberships may be terminated or suspended except pursuant to a procedure which is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) The articles or bylaws set forth a procedure which provides:

(i) Not less than fifteen (15) days prior written notice of the expulsion, suspension or termination and the reasons therefore; and

(ii) An opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(b) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(3) Any written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(4) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one (1) year after the effective date of the expulsion, suspension or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees.

SOURCES: Laws, 1987, ch. 485, § 45, eff from and after January 1, 1988.

Cross References — Application to religious corporations, see § 79-11-403.

RESEARCH REFERENCES

ALR. Suspension or expulsion from professional association and the remedies therefor. 20 A.L.R.2d 531.

Right to damages for exclusion from membership in social or fraternal organization. 59 A.L.R.2d 1290.

Exclusion or expulsion from association

or club as violation of state civil rights act. 38 A.L.R.4th 628.

What constitutes private club or association not otherwise open to public that is exempt from state civil rights statute. 83 A.L.R.5th 467.

§ 79-11-191. Purchase by corporation of membership of member who resigns or whose membership is terminated.

A corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of Section 79-11-293.

SOURCES: Laws, 1987, ch. 485, § 46, eff from and after January 1, 1988.

Cross References — Conditions for corporation to purchase memberships, see § 79-11-293.

§ 79-11-193. Proceedings brought on behalf of domestic or foreign corporation.

(1) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by:

(a) Any member or members having five percent (5%) or more of the voting power or by fifty (50) members, whichever is less; or

(b) Any director.

(2) In any such proceeding, each complainant shall be a member or director at the time of bringing the proceeding.

(3) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(4) On termination of the proceeding the court may require the complainants to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(5) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise was successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise or settlement of an action or claim, the court may award the complainants reasonable expenses (including counsel fees).

SOURCES: Laws, 1987, ch. 485, § 47, eff from and after January 1, 1988.

Cross References — Application to religious corporations, see § 79-11-403.

JUDICIAL DECISIONS

1. Demand.

A demand requires some meaningful opportunity for the directors to act after learning of a threat of suit on the issue. *Longanecker v. Diamondhead Country Club*, 760 So. 2d 764 (Miss. 2000).

Substantial evidence supported the determination that the plaintiffs failed to

make demand upon the defendant association as one plaintiff even admitted in his testimony that no written demand was ever made on the association. *Longanecker v. Diamondhead Country Club*, 760 So. 2d 764 (Miss. 2000).

RESEARCH REFERENCES

ALR. Allowance of punitive damages in stockholder's derivative action. 67 A.L.R.3d 350.

Negligence, nonfeasance, or ratification of wrongdoing as excusing demand on directors as prerequisite to bringing of stockholder's derivative suit on behalf of corporation. 99 A.L.R.3d 1034.

Propriety of termination of properly initiated derivative action by "independent committee" appointed by board of direc-

tors whose actions (or inaction) are under attack. 22 A.L.R.4th 1206.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 1867, 1874 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 21 et seq.

Lawyers' Edition. Pleading and verification requirements in stockholders' derivative suits in federal courts. 15 L. Ed. 2d 1120.

§ 79-11-195. Delegates.

(1) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(2) The articles or bylaws may set forth provisions relating to:

(a) The characteristics, qualifications, rights, limitations and obligations of delegates including their selection and removal;

(b) Calling, noticing, holding and conducting meetings of delegates; and

(c) Carrying on corporate activities during and between meetings of delegates.

SOURCES: Laws, 1987, ch. 485, § 48, eff from and after January 1, 1988.

Cross References — As to petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

§ 79-11-197. Annual membership meeting.

(1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) At the annual meeting:

(a) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) The members shall consider and act upon such other matters as may be raised consistent with the requirements of Sections 79-11-205 and 79-11-219.

(4) The failure to hold an annual meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

SOURCES: Laws, 1987, ch. 485, § 49, eff from and after January 1, 1988.

Cross References — Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations
§§ 797, 829.

§ 79-11-199. Special meetings of members.

(1) A corporation with members shall hold a special meeting of members:

(a) On call of its board or the person or persons authorized to do so by the articles or bylaws; or

(b) If the holders of at least five percent (5%) of the voting power sign, date and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(2) The close of business on the thirtieth day before delivery of the demand for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent (5%) requirement of subsection (1) of this section has been met.

(3) If a notice for a special meeting demanded under subsection (1)(b) of this section is not given pursuant to Section 79-11-205 within thirty (30) days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (4) of this section, a person

signing the demand or demands may set the time and place of the meeting and give notice pursuant to Section 79-11-205.

(4) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by Section 79-11-205 may be conducted at a special meeting of members.

SOURCES: Laws, 1987, ch. 485, § 50, eff from and after January 1, 1988.

Cross References — Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to requirements for a court-ordered meeting of members, see § 79-11-201.

§ 79-11-201. Court-ordered meeting of members.

(1) The chancery court of the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held:

(a) On application of any member or other person entitled to participate in the annual meeting, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(b) On application of a member who signed a demand for a special meeting valid under Section 79-11-199, or a person or persons entitled to call a special meeting,* if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's cost (including reasonable counsel fees) incurred to obtain the order.

SOURCES: Laws, 1987, ch. 485, § 51, eff from and after January 1, 1988.

Cross References — Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to requirements for approval of corporate action by members without holding a meeting of members, see § 79-11-203.

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am Jur. 7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Form 297.

§ 79-11-203. Approval of action by members without holding meeting of members.

(1) Unless limited or prohibited by the articles or bylaws, action required or permitted by Section 79-11-101 et seq. to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one or more consents describing the action taken, signed by those members representing at least eighty percent (80%) of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under Section 79-11-201 or 79-11-209, the record date for determining members entitled to take action without a meeting is the date the first member signed the consent under subsection (1) of this section.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the Secretary of State.

(4) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten (10) days after such written notice is given.

SOURCES: Laws, 1987, ch. 485, § 52, eff from and after January 1, 1988.

Cross References — Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

§ 79-11-205. Notice of meetings of members; notice of adjourned meetings.

(1) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice which conforms to the requirements of subsection (3) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(3) Notice is fair and reasonable if:

(a) The corporation notifies its members of the place, date and time of each annual and special meeting of members no fewer than ten (10) (or if

notice is mailed by other than first-class or registered mail, thirty (30)) nor more than sixty (60) days before the meeting date;

(b) Notice of an annual meeting includes a description of any matter or matters which must be approved by the members under Sections 79-11-269, 79-11-281, 79-11-301, 79-11-315, 79-11-323, 79-11-331, 79-11-333 or 79-11-335; and

(c) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under Section 79-11-209, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) requested in writing to do so by a person entitled to call a special meeting; and

(b) the request is received by the secretary or president of the corporation at least ten (10) days before the corporation gives notice of the meeting.

SOURCES: Laws, 1987, ch. 485, § 53, eff from and after January 1, 1988.

Cross References — Notice requirements in general, see § 79-11-129.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to matters which may be considered by and acted upon by members of corporation at annual meeting, see § 79-11-197.

Applicability of this section to requirements for holding of special meeting of members of corporation, see § 79-11-199.

Applicability of this section to restatement of corporation's articles of incorporation, see § 79-11-307.

Applicability of this section to notice requirements for meeting of members to approve amendments to bylaws, see § 79-11-315.

Applicability of this section to notice requirements for meeting of members to approve plan of merger, see § 79-11-321.

Applicability of this section to notice requirements for meeting of members to approve the sale or other disposition of a corporation's property not in the usual course of business, see § 79-11-331.

Applicability of this section to notice requirements for meeting of members to approve dissolution of corporation, see § 79-11-335.

§ 79-11-207. Waiver of notice requirements by member.

(1) A member may waive any notice required by Section 79-11-101 et seq., the articles or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and

be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A member's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

SOURCES: Laws, 1987, ch. 485, § 54, eff from and after January 1, 1988.

§ 79-11-209. Record date.

(1) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting.

(2) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(4) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy (70) days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice of voting.

SOURCES: Laws, 1987, ch. 485, § 55, eff from and after January 1, 1988.

Cross References — Applicability of this section to definition of “record date” for purposes of Mississippi Nonprofit Corporation Act, see § 79-11-127.

Applicability of this section to the requirements for approval of corporate action by members without holding a meeting of members, see § 79-11-203.

Applicability of this section to the requirement of notice of adjourned meetings of members, see § 79-11-205.

§ 79-11-211. Corporate action taken by ballot without meeting.

(1) Except as provided in subsection (5) of this section and unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot shall:

(a) Set forth each proposed action; and

(b) Provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot shall:

(a) Indicate the number of responses needed to meet the quorum requirements;

(b) State the percentage of approvals necessary to approve each matter other than election of directors; and

(c) Specify the time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

SOURCES: Laws, 1987, ch. 485, § 56, eff from and after January 1, 1988.

Cross References — Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

§ 79-11-213. Preparation of list of members entitled to notice of meeting and members entitled to vote at meeting; list to be open for inspection; court may order inspection and copying of lists.

(1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(2) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of Sections 79-11-285(c) and 79-11-291, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (2) of this section); the chancery court of the county where a corporation's principal office (or if none in this state, its registered office) is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) of this section prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

SOURCES: Laws, 1987, ch. 485, § 57, eff from and after January 1, 1988.

Cross References — Application to religious corporations, see § 79-11-403.

RESEARCH REFERENCES

ALR. Right of member of nonprofit association or corporation to possession, inspection, or use of membership lists. 37 A.L.R.4th 1206.

§ 79-11-215. Each member to have one vote.

(1) Unless the articles or bylaws provide otherwise, each member is entitled to one (1) vote on each matter voted on by the members.

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two (2) or more persons, their acts with respect to voting shall have the following effect:

(a) If only one (1) votes, such act binds all; and

(b) If more than one (1) votes, the vote shall be divided on a pro rata basis.

SOURCES: Laws, 1987, ch. 485, § 58, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations § 74:984.

§ 79-11-217. Quorum requirements.

(1) Unless Section 79-11-101 et seq., the articles, or the bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(2) A bylaw amendment to decrease the quorum for any member action may be approved by the members, or, unless prohibited by the bylaws, by the board.

(3) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(4) Unless one-third ($\frac{1}{3}$) or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual meeting of members are those matters that are described in the meeting notice.

SOURCES: Laws, 1987, ch. 485, § 59, eff from and after January 1, 1988.

Cross References — Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

§ 79-11-219. Votes required for member action.

(1) Unless Section 79-11-101 et seq., the articles, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(2) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

SOURCES: Laws, 1987, ch. 485, § 60, eff from and after January 1, 1988.

Cross References — Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to matters which may be considered by and acted upon by members of corporation at annual meeting, see § 79-11-197.

§ 79-11-221. Voting by proxy.

(1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a different period is expressly provided in the appointment form; provided, however, that no proxy shall be valid for more than three (3) years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:

(a) Attending any meeting and voting in person; or

(b) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to Section 79-11-227 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

SOURCES: Laws, 1987, ch. 485, § 61, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agency § 172.

18A Am. Jur. 2d, Corporations § 904.

§ 79-11-223. Cumulative voting.

(1) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote,

and cast the product for a single candidate or distribute the product among two (2) or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) A member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one (1) member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(3) A director elected by cumulative voting may be removed by the members without cause if the requirements of Section 79-11-245 are met and the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(4) Members may not cumulatively vote if the directors and members are identical.

SOURCES: Laws, 1987, ch. 485, § 62, eff from and after January 1, 1988.

§ 79-11-225. Method of election of directors.

A corporation may provide in its articles or bylaws for election of directors by members or delegates: (a) on the basis of chapter or other organization unit; (b) by region or other geographic unit; (c) by preferential voting; or (d) by any other reasonable method.

SOURCES: Laws, 1987, ch. 485, § 63, eff from and after January 1, 1988.

§ 79-11-227. Acceptance or rejection of vote, consent, waiver or proxy appointment.

(1) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member if:

(a) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver or proxy appointment; or

(e) Two (2) or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the co-holders and the person signing appears to be acting on behalf of all the co-holders.

(3) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

SOURCES: Laws, 1987, ch. 485, § 64, eff from and after January 1, 1988.

Cross References — Applicability of this section to acceptance by a corporation of a proxy's votes or other action, see § 79-11-221.

§ 79-11-229. Voting agreements between members.

(1) Two (2) or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Such agreements may be valid for a period of up to ten (10) years.

(2) A voting agreement created under this section is specifically enforceable.

SOURCES: Laws, 1987, ch. 485, § 65, eff from and after January 1, 1988.

§ 79-11-231. Board of directors; persons authorized to exercise some or all of powers of board.

(1) Each corporation must have a board of directors.

(2) Except as provided in Section 79-11-101 et seq. or subsection (3) of this section, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(3) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

SOURCES: Laws, 1987, ch. 485, § 66, eff from and after January 1, 1988.

Cross References — Requirement for and duties of board of directors under Mississippi Business Corporation Act, see § 79-4-8.01.

Applicability of this section to definition of “board” or “board of directors” for purposes of Mississippi Nonprofit Corporation Act, see § 79-11-127.

Authority of committee of board to exercise board’s authority under this section, see § 79-11-265.

Liability of director for unlawful distribution, see § 79-11-270.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations
§ 1314.

CJS. 14 C.J.S., Charities § 81.

§ 79-11-233. Qualifications for directors.

All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

SOURCES: Laws, 1987, ch. 485, § 67, eff from and after January 1, 1988.

Cross References*— Qualifications of directors under Mississippi Business Corporation Act, see § 79-4-8.02.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 81.

§ 79-11-235. Number of directors.

(1) The number of directors shall be specified in or fixed in accordance with the articles or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to or in the manner prescribed in the articles or bylaws.

SOURCES: Laws, 1987, ch. 485, § 68, eff from and after January 1, 1988.

Cross References — Number and election of directors under Mississippi Business Corporation Act, see §§ 79-4-8.03, 79-4-8.04.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 81.

§ 79-11-237. Election, appointment or designation of directors.

(1) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election or provide that some of the directors are appointed by some other person or designated.

(2) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

SOURCES: Laws, 1987, ch. 485, § 69, eff from and after January 1, 1988.

Cross References — Number and election of directors under Mississippi Business Corporation Act, see §§ 79-4-8.03, 79-4-8.04.

JUDICIAL DECISIONS

1. Election of directors.

Substantial evidence supported chancellor's ruling that the best evidence was the corporate minutes and that there was no evidence in the minutes to support appellants' claim that they had been elected as members of corporation and had authority to replace the board of directors because corporate records consti-

tute best evidence of corporate acts. Because there was no evidence that there were any members of the corporation, the corporation's board of directors had the authority to elect the directors and the board became self-perpetuating under Miss. Code Ann. § 79-11-237(2). *His Way, Inc. v. McMillin*, 909 So. 2d 738 (Miss. Ct. App. 2005).

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1189, 1216.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 293, 294.

6 Am. Jur. Legal Forms 2d, Corporations § 74:1021.

CJS. 14 C.J.S., Charities § 81.

§ 79-11-239. Term of office of directors.

(1) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five (5) years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one (1) year. Directors may be elected for successive terms.

(2) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(3) Except as provided in the articles or bylaws:

(a) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(b) The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

(4) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors.

SOURCES: Laws, 1987, ch. 485, § 70, eff from and after January 1, 1988.

Cross References — Terms of office of directors under Mississippi Business Corporation Act, see §§ 79-4-8.05, 79-4-8.06.

Application to religious corporations, see § 79-11-403.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 81.

§ 79-11-241. Staggering terms of directors.

The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

SOURCES: Laws, 1987, ch. 485, § 71, eff from and after January 1, 1988.

Cross References — Terms of office of directors under Mississippi Business Corporation Act, see §§ 79-4-8.05, 79-4-8.06.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations
§ 1216.

§ 79-11-243. Resignation of director.

(1) A director may resign at any time by delivering written notice to the board of directors, its presiding officer or to the president or secretary.

(2) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

SOURCES: Laws, 1987, ch. 485, § 72, eff from and after January 1, 1988.

Cross References — Resignation of director under Mississippi Business Corporation Act, see § 79-4-8.07.

Filling of vacancy in board of directors caused by resignation of director effective at later date under this section, see § 79-11-251.

§ 79-11-245. Removal of directors.

(1) The members may remove one or more directors elected by them without cause.

(2) If a director is elected by a class, chapter or other organization unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit or grouping.

(3) Except as provided in subsection (9) of this section, a director may be removed under subsection (1) or (2) of this section only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(4) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(5) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(6) In computing whether a director is protected from removal under subsections (2) through (4) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(7) An entire board of directors may be removed under subsections (1) through (5) of this section.

(8) The board of directors of a corporation may remove a director without cause who has been elected by the board by the vote of a two-thirds ($\frac{2}{3}$) of the directors then in office or such greater number as is set forth in the articles or bylaws.

(9) If at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

SOURCES: Laws, 1987, ch. 485, § 73, eff from and after January 1, 1988.

Cross References — Removal of directors under Mississippi Business Corporation Act, see §§ 79-4-8.08, 79-4-8.09.

Applicability of this section to removal of director elected by cumulative voting, see § 79-11-223.

Application to religious corporations, see § 79-11-403.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 81.

§ 79-11-247. Removal of designated director or appointed director.

(1) A designated director may be removed by an amendment to the article or bylaws deleting or changing the designation.

(2) Appointed directors:

(a) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(b) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary;

(c) A removal is effective when the notice is effective unless the notice specifies a future effective date.

SOURCES: Laws, 1987, ch. 485, § 74, eff from and after January 1, 1988.

Cross References — Removal of directors under Mississippi Business Corporation Act, see §§ 79-4-8.08, 79-4-8.09.

§ 79-11-249. Removal of director by court proceeding.

(1) The chancery court of the county where a corporation's principal office is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or its members holding at least ten percent (10%) of the voting power of any class if the court finds that:

(a) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in Sections 79-11-267 and 79-11-269, and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(3) If members commence a proceeding under subsection (1) of this section, the corporation shall be made a party defendant.

SOURCES: Laws, 1987, ch. 485, § 75, eff from and after January 1, 1988.

Cross References — Removal of directors under Mississippi Business Corporation Act, see §§ 79-4-8.08, 79-4-8.09.

RESEARCH REFERENCES

Am Jur. 7A Am. Jur. Pl & Pr Forms
(Rev), Corporations, Forms 291, 300, 301.

§ 79-11-251. Filling of vacancy in board of directors.

(1) Unless the articles or bylaws provide otherwise, and except as provided in subsections (2) and (3) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The members, if any, may fill the vacancy; provided that if the vacant office was held by a director elected by a class, chapter or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(3) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(4) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under Section 79-11-243(2) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

SOURCES: Laws, 1987, ch. 485, § 76, eff from and after January 1, 1988.

Cross References — Filling vacancy on board under Mississippi Business Corporation Act, see § 79-4-8.10.

§ 79-11-253. Compensation of directors.

Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors.

SOURCES: Laws, 1987, ch. 485, § 77, eff from and after January 1, 1988.

Cross References — Compensation of directors under Mississippi Business Corporation Act, see § 79-4-8.11.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 81.

§ 79-11-255. Meetings of board of directors.

(1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

SOURCES: Laws, 1987, ch. 485, § 78, eff from and after January 1, 1988.

Cross References — Meetings and actions of the board under Mississippi Business Corporation Act, see §§ 79-4-8. 20 through 79-4-8.25.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to committees of the board and their members, see § 79-11-265.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations
§ 1257.

§ 79-11-257. Action taken by board of directors without meeting.

(1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by Section 79-11-101 et seq. to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

SOURCES: Laws, 1987, ch. 485, § 79, eff from and after January 1, 1988.

Cross References — Meetings and actions of the board under Mississippi Business Corporation Act, see §§ 79-4-8. 20 through 79-4-8.25.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to committees of the board and their members, see § 79-11-265.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations
§ 1257.

§ 79-11-259. Notice of regular and special meetings of board of directors.

(1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two (2) days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

SOURCES: Laws, 1987, ch. 485, § 80, eff from and after January 1, 1988.

Cross References — Meetings and actions of the board under Mississippi Business Corporation Act, see §§ 79-4-8. 20 through 79-4-8.25.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to committees of the board and their members, see § 79-11-265.

Applicability of this section to notice requirements for meeting of directors to amend bylaws of corporation with no members, see § 79-11-313.

Applicability of this section to notice requirements for meeting of board of directors to approve plan of merger, see § 79-11-321.

Applicability of this section to notice requirements for meeting of board of directors to approve the sale or other disposition of a corporation's property not in the usual course of business, see § 79-11-331.

Notice requirements for meeting of board of directors or incorporators of corporation without members to dissolve the corporation, see § 79-11-333 and § 79-11-335.

§ 79-11-261. Waiver of notice of meeting of board of directors.

(1) A director may waive any notice required by Section 79-11-101 et seq., the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

SOURCES: Laws, 1987, ch. 485, § 81, eff from and after January 1, 1988.

Cross References — Meetings and actions of the board under Mississippi Business Corporation Act, see §§ 79-4-8. 20 through 79-4-8.25.

Applicability of this section to committees of the board and their members, see § 79-11-265.

§ 79-11-263. Quorum of board of directors; director present at meeting deemed to have assented to action taken; exceptions.

(1) Except as otherwise provided in Section 79-11-101 et seq., the articles or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins.

(2) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless Section 79-11-101 et seq., the articles or bylaws, require the vote of a greater number of directors.

(3) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (a) he objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting business at the meeting; (b) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) he delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

SOURCES: Laws, 1987, ch. 485, § 82; Laws, 1988, ch. 417, § 4, eff from and after July 1, 1988.

Cross References — Meetings and actions of the board under Mississippi Business Corporation Act, see §§ 79-4-8. 20 through 79-4-8.25.

Applicability of this section to committees of the board and their members, see § 79-11-265.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations
§ 1257.

§ 79-11-265. Committees of board of directors.

(1) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two (2) or more directors who serve at the pleasure of the board.

(2) The creation of a committee and appointment of directors to it must be approved by the greater of:

(a) A majority of all the directors in office when the action is taken; or

(b) The number of directors required by the articles or bylaws to take action under Section 79-11-263.

(3) Sections 79-11-255 through 79-11-263, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

(4) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under Section 79-11-231.

(5) A committee of the board may not, however:

(a) Authorize distributions;

(b) Approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets;

(c) Elect, appoint or remove directors or fill vacancies on the board or on any of its committees; or

(d) Adopt, amend or repeal the articles or bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 79-11-267.

SOURCES: Laws, 1987, ch. 485, § 83, eff from and after January 1, 1988.

Cross References — Meetings and actions of the board under Mississippi Business Corporation Act, see §§ 79-4-8. 20 through 79-4-8.25.

Requirement that corporation keep permanent record of all actions taken by committees of board of directors as authorized by this section, see § 79-11-283.

§ 79-11-267. Director to act in best interests of corporation; director's reliance upon others for information; liability of directors.

(1) A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith belief that he is acting in the best interests of the corporation.

(2) Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

(3) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(4) A person alleging a violation of this section has the burden of proving the violation.

SOURCES: Laws, 1987, ch. 485, § 84, eff from and after January 1, 1988.

Cross References — General standards for directors under Mississippi Business Corporation Act, see §§ 79-4-8.30 through 79-4-8.33.

Violation of duty set forth in this section as ground for removal of director, see § 79-11-249.

Provision that creation of, delegation of authority to, or action by committee does not alone constitute compliance by director with standards of conduct described in this section, see § 79-11-265.

Liability of director for unlawful distribution, see § 79-11-270.

Inability of corporation to indemnify director against his or her failure to act in accordance with standard of conduct provided in this section, see § 79-11-281.

Applicability of this section to conduct of directors after dissolution of corporation, see § 79-11-341.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations §§ 1314, 1460, 1480, 1540. **CJS.** 14 C.J.S., Charities § 81.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 311-336.

§ 79-11-269. Conflict of interest transaction.

(1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one (1) of the following is true:

(a) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction;

(b) The material facts of the transaction and the director's interest were disclosed or known to the members entitled to vote and they authorized, approved or ratified the transaction; or

(c) The transaction was fair to the corporation.

(2) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (a) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction, or (b) another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

(3) For purposes of subsection (1)(a) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (1)(a) of this

section if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

(4) For purposes of subsection (1)(b) of this section, a conflict of interest transaction is authorized, approved or ratified if it receives the vote of a majority of the members whose votes are entitled to be counted under this subsection. The vote of a member who is a director who has a direct or indirect interest in the transaction, and the vote of a member who is under the control of an entity described in subsection (2)(a) of this section, may not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under subsection (1)(b) of this section. The vote of those members, however, shall be counted in determining whether the transaction is approved under other sections of Section 79-11-101 et seq. A majority of the members, whether or not present, whose votes are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

SOURCES: Laws, 1987, ch. 485, § 85, eff from and after January 1, 1988.

Cross References — General standards for directors under Mississippi Business Corporation Act, see §§ 79-4-8.30 through 79-4-8.33.

Director's conflict of interest under Mississippi Business Corporation Act, see §§ 79-4-8.60 through 79-4-8.70.

Requirement that notice of meetings of members include a description of any matters which must be approved by the members under this section, see § 79-11-205.

Violation of duty set forth in this section as ground for removal of director, see § 79-11-249.

§ 79-11-270. Liability of director for unlawful distribution.

(1) A director who votes for or assents to a distribution made in violation of Section 79-11-101 et seq. is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 79-11-101 et seq., if it is established that he did not perform his duties in compliance with Section 79-11-267. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) for the unlawful distribution; and

(b) From each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of Section 79-11-101 et seq.

SOURCES: Laws, 1988, ch. 417, § 5, eff from and after July 1, 1988.

Cross References — General standards for directors under Mississippi Business Corporation Act, see §§ 79-4-8.30 through 79-4-8.33.

§ 79-11-271. Officers of corporation.

(1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one (1) office in a corporation.

SOURCES: Laws, 1987, ch. 485, § 86, eff from and after January 1, 1988.

Cross References — Officers of corporation under Mississippi Business Corporation Act, see §§ 79-4-8.40 through 79-4-8.44.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations
§§ 1534 et seq.

CJS. 14 C.J.S., Charities § 81.

§ 79-11-273. Duties of officers.

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

SOURCES: Laws, 1987, ch. 485, § 87, eff from and after January 1, 1988.

Cross References — Officers of corporation under Mississippi Business Corporation Act, see §§ 79-4-8.40 through 79-4-8.44.

Applicability of this section to definition of "secretary" for purposes of Mississippi Nonprofit Corporation Act, see § 79-11-127.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations
§§ 1328 et seq.

CJS. 14 C.J.S., Charities § 81.

§ 79-11-275. Officers to act in best interests of corporation; reliance upon others for information; liability of officers.

(1) An officer with discretionary authority shall discharge his duties under that authority, in accordance with his good faith belief that he is acting in the best interests of the corporation.

(2) Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, an officer is entitled to rely on

information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer believes, in good faith, to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants or other persons as to matters the officer believes, in good faith, are within the person's professional or expert competence.

(3) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(4) A person alleging a violation of this section has the burden of proving the violation.

SOURCES: Laws, 1987, ch. 485, § 88, eff from and after January 1, 1988.

Cross References — Officers of corporation under Mississippi Business Corporation Act, see §§ 79-4-8.40 through 79-4-8.44.

Inability of corporation to indemnify officer against his or her failure to act in accordance with standard of conduct provided in this section, see § 79-11-281.

Applicability of this section to conduct of officers after dissolution of corporation, see § 79-11-341.

RESEARCH REFERENCES

Am Jur. 18B Am. Jur. 2d, Corporations **CJS.** 14 C.J.S., Charities § 81.
§§ 1314, 1333, 1460, 1480, 1540.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 311-336.

§ 79-11-277. Resignation or removal of officer.

(1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(2) A board of directors may remove any officer at any time with or without cause.

SOURCES: Laws, 1987, ch. 485, § 89, eff from and after January 1, 1988.

Cross References — Officers of corporation under Mississippi Business Corporation Act, see §§ 79-4-8.40 through 79-4-8.44.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 81.

§ 79-11-279. Contract rights between officer and corporation.

(1) The appointment of an officer does not itself create contract rights between the officer and the corporation.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

SOURCES: Laws, 1987, ch. 485, § 90, eff from and after January 1, 1988.

Cross References — Officers of corporation under Mississippi Business Corporation Act, see §§ 79-4-8.40 through 79-4-8.44.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 81.

§ 79-11-281. Indemnification of director, officer, employee, or agent.

(1) In this section:

(a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(b) "Expenses" includes counsel fees.

(c) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan) or reasonable expenses incurred with respect to a proceeding.

(d) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an individual other than a director, as contemplated in subsection (8) of this section, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise.

(e) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

(2) Except as provided in subsection (3) of this section, a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

- (a) He conducted himself in good faith; and
- (b) He in good faith believed:
 - (i) In the case of conduct in his official capacity with the corporation that his conduct was in its best interests; and
 - (ii) In all other cases, that his conduct was at least not opposed to its best interests; and
- (c) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (2)(b)(ii) of this section.

The termination of a proceeding by judgment, order, settlement or conviction is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(3) A corporation may not indemnify a director under this section:

- (a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
- (b) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

(4) Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

(5) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- (a) The director furnishes the corporation a written statement of his good faith belief that he has met the standard of conduct described in subsection (2) of this section;
- (b) The director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and
- (c) A determination is made that the facts then known to those making the determination would not preclude indemnification under Section 79-11-101 et seq.

The undertaking required by subsection (5)(b) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

Determinations and authorizations of payment under this section shall be made in the manner specified in subsection (7) of this section.

(6) Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or seek indemnification in another court of competent jurisdiction. The court may order indemnification if it determines:

(a) The director is entitled to mandatory indemnification under subsection (4) of this section, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(b) With respect to a proceeding by or in the right of the corporation, the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, even though he was adjudged liable, but any indemnification shall be limited to reasonable expenses incurred.

(7) A corporation may not indemnify a director under subsection (2) of this section unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in subsection (2) of this section.

(a) The determination shall be made:

(i) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(ii) If a quorum cannot be obtained under subparagraph (i) of this paragraph, by a majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceeding;

(iii) By special legal counsel:

1. Selected by the board of directors or its committee in the manner prescribed in subparagraph (i) or (ii) of this paragraph; or

2. If a quorum of the board of directors cannot be obtained under subparagraph (i) of this paragraph and a committee cannot be designated under subparagraph (ii) of this paragraph selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

(iv) By the members but with the parties to the proceeding not being permitted to vote on the determination.

(b) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (7)(a)(iii) of this section to select counsel.

(8) Unless limited by a corporation's articles of incorporation:

(a) An officer of the corporation is entitled to mandatory indemnification under subsection (2) of this section and is entitled to apply for

court-ordered indemnification under subsection (6) of this section, in each case to the same extent as a director;

(b) The corporation may indemnify and advance expenses under Section 79-11-101 et seq. to an officer, employee or agent of the corporation to the same extent as to a director.

(9) A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee or agent, whether or not the corporation would have power to indemnify him against the same liability under subsection (1) or (2) of this section.

(10) Unless the articles of incorporation or bylaws provide otherwise, any authorization of indemnification in the articles of incorporation or bylaws shall not be deemed to prevent the corporation from providing the indemnity permitted or mandated by this section.

(11) Any corporation shall have power to make any further indemnity, including advance of expenses, to and to enter into contracts of indemnity with any director, officer, employee or agent that may be authorized by the articles of incorporation or any bylaw made by the members (or if there are no members, by the board of directors) or any resolution adopted, before or after the event, by the members (or if there are no members, by the board of directors), except an indemnity against his failure to act in accordance with the standard of conduct provided in Sections 79-11-267 or 79-11-275, as applicable. Unless the articles of incorporation, or any such bylaw or resolution provide otherwise, any determination as to any further indemnity shall be made in accordance with subsection (7)(a) of this section. Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such a person.

SOURCES: Laws, 1987, ch. 485, § 91, eff from and after January 1, 1988.

Cross References — Indemnification of directors, officers under Mississippi Business Corporation Act, see §§ 79-4-8.50 through 79-4-8.59.

Indemnification of corporation director, see §§ 79-4-8.51, 79-4-8.52, 79-4-8.54.

Indemnification of corporation officer, see § 79-4-8.56.

Requirement that notice of meetings of members include a description of any matters which must be approved by the members under this section, see § 79-11-205.

JUDICIAL DECISIONS

1. Adjudged liable.
2. Defense to indemnification.

1. Adjudged liable.

Director who was acquitted on indictment charging embezzlement for personal benefit was not "adjudged liable" within meaning of statute which prohibits corporation from indemnifying director in connection with proceeding charging improper personal benefit, if director was adjudged liable on basis that personal benefit was improperly received. *Murphree v. Federal Ins. Co.*, 707 So. 2d 523 (Miss. 1997).

Mere indictment of director for embezzlement for personal profit or advantage does not entitle corporation to deny indemnification on basis of statute permitting corporation to reimburse reasonable expenses incurred by director in advance of final disposition of proceeding, if determination is made that facts then known to those making determination would not preclude indemnification; another portion of statute called for director to be adjudged liable before indemnification could

be denied, and indictment was not equal to being adjudged liable. *Murphree v. Federal Ins. Co.*, 707 So. 2d 523 (Miss. 1997).

2. Defense to indemnification.

Advice of counsel was not valid excuse for corporation's denial of director's request for indemnification after director was indicted for embezzlement for personal benefit; attorneys misread plain language of statute that called for director to be adjudged liable before indemnification could be denied, and corporation heeded attorneys' advice at its own risk. *Murphree v. Federal Ins. Co.*, 707 So. 2d 523 (Miss. 1997).

Corporation's motivation in denying director's request for indemnification before his acquittal on charge of embezzlement for personal benefit presented question of fact precluding summary judgment on claim of bad faith breach of contractual duty to indemnify director, even though no judicial interpretation existed concerning statute on indemnification of director, and case allegedly presented matter of first impression. *Murphree v. Federal Ins. Co.*, 707 So. 2d 523 (Miss. 1997).

RESEARCH REFERENCES

Am Jur. 15 **Am. Jur.** 2d, **Charities** § 185.

§ 79-11-282. Restrictions on corporate loans; borrower's liability.

(1) A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation.

(2) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

SOURCES: Laws, 1988, ch. 417, § 6, eff from and after July 1, 1988.

Cross References — Application to religious corporations, see § 79-11-403.

§ 79-11-283. Recordkeeping requirements.

(1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by Section 79-11-265.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;

(d) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(e) All written communications to members generally within the past three (3) years;

(f) A list of the names and business or home addresses of its current directors and officers; and

(g) Its most recent status report delivered to the Secretary of State under Section 79-11-391.

SOURCES: Laws, 1987, ch. 485, § 92, eff from and after January 1, 1988.

Cross References — Member's right to inspect and copy corporation records, see § 79-11-285.

RESEARCH REFERENCES

ALR. Right of member of nonprofit association or corporation to possession, inspection, or use of membership lists. 37 A.L.R.4th 1206.

§ 79-11-285. Members' right to inspect and copy corporation records; requirements.

(1) Subject to Section 79-11-287(3), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in Section 79-11-283(5) if the member gives the corporation written notice of his demand at least five (5) business days before the date on which the member wishes to inspect and copy.

(2) A member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) of this section and gives the corporation written notice at least five (5) business days before the date on which the member wishes to inspect and copy:

(a) Excerpts from any records required to be maintained under Section 79-11-283(1), to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) Subject to Section 79-11-291, the membership list.

(3) A member may inspect and copy the records identified in subsection (2) of this section only if:

(a) The member's demand is made in good faith and for a proper purpose;

(b) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) The records are directly connected with this purpose.

(4) This section does not affect:

(a) The right of a member to inspect records if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of Section 79-11-101 et seq., to compel the production of corporate records for examination.

SOURCES: Laws, 1987, ch. 485, § 93, eff from and after January 1, 1988.

Cross References — Applicability of this section to member's right to copy corporation's list of members entitled to notice of meeting, see § 79-11-213.

Inspection and copying of corporate records, see § 79-11-287.

Authority of chancery court to order inspection and copying of records if corporation does not allow member to inspect and copy records under this section, see § 79-11-289.

RESEARCH REFERENCES

ALR. Stockholder's right to inspect books and records of foreign corporation. 19 A.L.R.3d 869.

Right of member of nonprofit association or corporation to possession, inspection, or use of membership list. 37 A.L.R.4th 1206.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 291, 298, 335.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 231-251.

§ 79-11-287. Conditions on right to inspect; member's agent or attorney has right to inspect and copy records; means of copying records; charges for copying documents by corporation; lists which satisfy demand for record of members.

(1) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(2) The right to copy records under Section 79-11-285 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The

charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a member's demand to inspect the record of members under Section 79-11-285(2)(c) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

SOURCES: Laws, 1987, ch. 485, § 94, eff from and after January 1, 1988.

Cross References — Member's right to inspect and copy corporation records, see § 79-11-285.

RESEARCH REFERENCES

ALR. Stockholder's right to inspect books and records of foreign corporation. 19 A.L.R.3d 869.

Right of member of nonprofit association or corporation to possession, inspection, or use of membership list. 37 A.L.R.4th 1206.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 291, 298, 335.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 231-251.

§ 79-11-289. Court-ordered inspection where corporation does not allow member to inspect and copy records.

(1) If a corporation does not allow a member who complies with Section 79-11-285(1) to inspect and copy any records required by that subsection to be available for inspection, the chancery court in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with Section 79-11-285(2) and (3) may apply to the chancery court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable attorney's fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

SOURCES: Laws, 1987, ch. 485, § 95, eff from and after January 1, 1988.

RESEARCH REFERENCES

ALR. Right of member of nonprofit association or corporation to possession, inspection, or use of membership list. 37 A.L.R.4th 1206.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 291, 298, 335.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 231-251.

§ 79-11-291. Restrictions on use of membership lists.

Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

- (a) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (b) Used for any commercial purpose; or
- (c) Sold to or purchased by any person.

SOURCES: Laws, 1987, ch. 485, § 96, eff from and after January 1, 1988.

Cross References — Applicability of this section to member's right to copy corporation's list of members entitled to notice of meeting, see § 79-11-213.

Member's right to inspect and copy corporation records, see § 79-11-285.

RESEARCH REFERENCES

ALR. Right of member of nonprofit association or corporation to possession, inspection, or use of membership list. 37 A.L.R.4th 1206.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 291, 228, 335.

§ 79-11-293. Authorization for making distributions; conditions for corporation to purchase memberships.

(1) Except as authorized under subsections (2) and (3) of this section, a corporation shall not make any distributions.

(2) A corporation may purchase its memberships if after the purchase is completed:

- (a) The corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (b) The corporation's total assets would at least equal the sum of its total liabilities.

(3) A corporation may make distributions upon dissolution in accordance with the provisions of Section 79-11-101 et seq. relating to dissolution.

SOURCES: Laws, 1987, ch. 485, § 97, eff from and after January 1, 1988.

Cross References — Authorization for corporation to purchase membership of member who resigns or whose membership is terminated, see § 79-11-191.

Liability of director for unlawful distribution, see § 79-11-270.

RESEARCH REFERENCES

ALR. Distribution of funds by nonprofit corporation absent dissolution. 51 A.L.R.3d 1318.

Am Jur. 6 Am. Jur. 2d, Associations and Clubs § 60.

19 Am. Jur. 2d, Corporations §§ 2279, 2281, 2298, 2299, 2418, 2488.

36 Am. Jur. 2d, Fraternal Orders and Benefit Societies §§ 166, 169.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:837, 74:842.

§ 79-11-295. Authorization to amend articles of incorporation.

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under Section 79-11-101 et seq.

SOURCES: Laws, 1987, ch. 485, § 98, eff from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations § 74:904.

§ 79-11-297. Amendment of articles of incorporation prior to corporation's acquisition of members.

If a corporation has not yet acquired members, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

SOURCES: Laws, 1987, ch. 485, § 99, eff from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

Filing fees, see § 79-11-109.

Application of Mississippi Nonprofit Corporation Act (§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Manner of making amendments to articles of incorporation where provisions of this section are not applicable, see § 79-11-301.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d,
Corporations § 74:904.

§ 79-11-299. Amendments to articles of incorporation which may be adopted by board of directors without action by members.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without action by members:

- (a) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (b) To delete the names and addresses of the initial directors;
- (c) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;
- (d) To make any other change expressly permitted by Section 79-11-101 et seq. to be made without member action.

SOURCES: Laws, 1987, ch. 485, § 100, eff from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

Application of Mississippi Nonprofit Corporation Act (§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

Filing fees, see § 79-11-109.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Manner of making amendments to articles of incorporation where provisions of this section are not applicable, see § 79-11-301.

Manner of making amendments to articles of incorporation in a restatement, where provisions of this section are not applicable, see § 79-11-307.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d,
Corporations § 74:904.

§ 79-11-301. Procedures for making amendments to articles of incorporation.

Except as provided in Sections 79-11-297 and 79-11-299, amendments to the articles of incorporation shall be made in the following manner:

- (a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice

setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in Section 79-11-101 et seq. for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds ($\frac{2}{3}$) of votes cast or a majority of the voting power, whichever is less.

(b) If there are no members, or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.

SOURCES: Laws, 1987, ch. 485, § 101, eff from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

Application of Mississippi Nonprofit Corporation Act (§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

Filing fees, see § 79-11-109

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Requirement that notice of meetings of members include a description of any matters which must be approved by the members under this section, see § 79-11-205.

Applicability of this section to restatement of corporation's articles of incorporation, see § 79-11-307.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-9.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-11-9.

11. In general.

Board of trustees of orphanage organized as nonprofit corporation are members of corporation entitled to adopt and approve amendment to corporate charter, to exclusion of governing body of church which created corporation, where corporate charter contains no provision regarding membership in corporation and trust-

ees have assumed all powers of membership. *Allgood v. Bradford*, 473 So. 2d 402 (Miss. 1985).

A charter amendment changing the domicile of a corporation from one county to another is not required to be recorded in the former county. *Bob Milner Rentals, Inc. v. Moon*, 246 Miss. 326, 149 So. 2d 473 (1963).

Contention that religious organization's charter, granted prior to adoption of Constitution in 1890, exempting property from taxation violated Constitution prohibiting passage of local, private, or special laws exempting property from taxation involved question of effect of amendment of organization's charter after adoption of Constitution. *City of Biloxi v. Trustees of Miss. Annual Conference Endowment Fund*, 179 Miss. 47, 173 So. 797 (1937).

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations § 74:904.

§ 79-11-303. Amendments to articles affecting members of class to be voted on by members of such class.

(1) The members of a class are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than such amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(c) Increase or decrease the number of memberships authorized for that class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, reclassification or termination of the memberships of that class; or

(f) Authorize a new class of memberships.

(2) If a class is to be divided into two (2) or more classes as a result of an amendment to the articles, the amendment must be approved by the members of each class that would be created by the amendment.

(3) If a class vote is required to approve an amendment to the articles the amendment must be approved by the members of the class by two-thirds ($\frac{2}{3}$) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(4) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

SOURCES: Laws, 1987, ch. 485, § 102, eff from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

Application of Mississippi Nonprofit Corporation Act (§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

Filing fees, see § 79-11-109.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to approval by class of members of plan of merger, see § 79-11-321.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d,
Corporations § 74:904.

§ 79-11-305. Filing of amendments to articles of incorporation.

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment setting forth:

- (a) The name of the corporation;
- (b) The text of each amendment adopted;
- (c) The date of each amendment's adoption;
- (d) If an amendment was adopted by the incorporators or board of directors without action by members, a statement to that effect and that action by members was not required;
- (e) If an amendment was approved by the members:
 - (i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably represented at the meeting;
 - (ii) Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that voting group.

SOURCES: Laws, 1987, ch. 485, § 103, eff from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

Application of Mississippi Nonprofit Corporation Act (§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

Filing fees, see § 79-11-109.

Applicability of this section to filing of corporation's articles of restatement, see § 79-11-307.

JUDICIAL DECISIONS

I. Under Current Law.

II. Under Former § 79-11-11.

1.-10. [Reserved for future use.]

11. In general.

I. Under Current Law.**1.-10. [Reserved for future use.]****II. Under Former § 79-11-11.****11. In general.**

A charter amendment changing the domicile of a corporation from one county to

another is not required to be recorded in the former county. *Bob Milner Rentals, Inc. v. Moon*, 246 Miss. 326, 149 So. 2d 473 (1963).

RESEARCH REFERENCES

Am Jur. 6 *Am. Jur. Legal Forms 2d*, Corporations § 74:904.

§ 79-11-307. Restatement of articles of incorporation.

(1) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by members, it must be adopted as provided in Section 79-11-301.

(3) If the board of directors submits a restatement for approval by members, the corporation shall notify each member of the proposed meeting in accordance with Section 79-11-205. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

(4) A corporation restating its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) Whether the restatement contains an amendment to the articles requiring approval by the members and, if it does not, that the board of directors adopted the restatement; or

(b) If the restatement contains an amendment to the articles requiring approval by the members, the information required by Section 79-11-305.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The Secretary of State may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section.

SOURCES: Laws, 1987, ch. 485, § 104, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

Application of the Mississippi Nonprofit Corporation Act (§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

Filing fees, see § 79-11-109.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d,
Corporations § 74:904.

§ 79-11-309. Amendments to articles of incorporation to carry out court ordered reorganization.

(1) A corporation's articles of incorporation may be amended without action by the board of directors or members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by Section 79-11-137.

(2) The individual or individuals designated by the court shall deliver to the Secretary of State for filing articles of amendment setting forth:

- (a) The name of the corporation;
- (b) The text of each amendment approved by the court;
- (c) The date of the court's order or decree approving the articles of amendment;
- (d) The title of the reorganization proceeding in which the order or decree was entered; and
- (e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Members of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

SOURCES: Laws, 1987, ch. 485, § 105, eff from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

Application of Mississippi Nonprofit Corporation Act (§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

Filing fees, see § 79-11-109.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d,
Corporations § 74:904.

§ 79-11-311. Amendments to articles of incorporation not to affect legal status of corporation.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which such property is held by the corporation or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

SOURCES: Laws, 1987, ch. 485, § 106, eff from and after January 1, 1988.

Cross References — Amendment of articles of incorporation under Mississippi Business Corporation Act, see §§ 79-4-10.01 through 79-4-10.09.

Application of Mississippi Nonprofit Corporation Act (§ 79-11-101 et seq.) to amendment of articles of incorporation of "private foundations" (as defined in 26 USCS § 509(a)), see § 79-11-57.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Legal Forms 2d, Corporations § 74:904.

§ 79-11-313. Adoption of amendments to bylaws where corporation has no members.

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors may adopt one or more amendments to the corporation's bylaws. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice shall be in accordance with Section 79-11-259. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

SOURCES: Laws, 1987, ch. 485, § 107, eff from and after January 1, 1988.

Cross References — Amendment of bylaws under Mississippi Business Corporation Act, see §§ 79-4-10.20 through 79-4-10.22.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

§ 79-11-315. Approval of amendments to bylaws where corporation has members.

(1) Unless Section 79-11-101 et seq., the articles, bylaws, the members (acting pursuant to subsection (2) of this section), or the board of directors (acting pursuant to subsection (3) of this section) require a greater vote or voting by class, an amendment to a corporation's bylaws to be adopted must be approved:

(a) By the board if the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected; and

(b) By the members of two-thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less.

(2) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the bylaws or board approval is required by subsection (1) of this section to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with Section 79-11-205. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

SOURCES: Laws, 1987, ch. 485, § 108, eff from and after January 1, 1988.

Cross References — Amendment of bylaws under Mississippi Business Corporation Act, see §§ 79-4-10.20 through 79-4-10.22.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Requirement that notice of meetings of members include a description of any matters which must be approved by the members under this section, see § 79-11-205.

§ 79-11-317. Amendments to bylaws affecting class of members to be voted on by such class.

(1) The members of a class are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(a) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than such amendment would affect another class;

(b) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(c) Increase or decrease the number of memberships authorized for that class;

(d) Increase the number of memberships authorized for another class;

(e) Effect an exchange, reclassification or termination of all or part of the memberships of that class; or

(f) Authorize a new class of memberships.

(2) If a class is to be divided into two (2) or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

(3) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class of two-thirds ($\frac{2}{3}$) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(4) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

SOURCES: Laws, 1987, ch. 485, § 109, eff from and after January 1, 1988.

Cross References — Amendment of bylaws under Mississippi Business Corporation Act, see §§ 79-4-10.20 through 79-4-10.22.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Applicability of this section to approval by class of members of plan of merger, see § 79-11-321.

§ 79-11-319. Plan of merger of corporations.

(1) One or more nonprofit corporations may merge into a business or nonprofit corporation, if the plan of merger is approved as provided in Section 79-11-321.

(2) The plan of merger must set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge; and

(b) The terms and conditions of the planned merger.

(3) The plan of merger may set forth:

(a) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(b) Other provisions relating to the planned merger.

SOURCES: Laws, 1987, ch. 485, § 110, eff from and after January 1, 1988.

Cross References — Merger of corporations under Mississippi Business Corporation Act, see §§ 79-4-11.02 through 79-4-11.08.

Filing fees, see § 79-11-109.

Applicability of this section to merger of foreign business or nonprofit corporation with domestic nonprofit corporation, see § 79-11-327.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations § 2320. **CJS.** 14 C.J.S., Charities § 91.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 401-406.

§ 79-11-321. Approval of plan of merger; abandonment of plan of merger.

(1) Unless Section 79-11-101 et seq., the articles of incorporation, the bylaws or the board of directors or members (acting pursuant to subsection (3) of this section) require a greater vote or voting by class, a plan of merger to be adopted must be approved:

(a) By the board of directors; and

(b) By the members, if any, by two-thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less.

(2) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with Section 79-11-259. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(3) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 79-11-205. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

(5) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall

include a copy or summary of the articles and bylaws which will be in effect immediately after the merger takes effect.

(6) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under Section 79-11-303 or 79-11-317. The plan is approved by a class of members by two-thirds ($\frac{2}{3}$) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(7) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

SOURCES: Laws, 1987, ch. 485, § 111, eff from and after January 1, 1988.

Cross References — Merger of corporations under Mississippi Business Corporation Act, see §§ 79-4-11.02 through 79-4-11.08.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Authority for one or more nonprofit corporations to merge and contents of plan of merger, see § 79-11-319.

Articles of merger and filing thereof, see § 79-11-323.

Applicability of this section to merger of foreign business or nonprofit corporation with domestic nonprofit corporation, see § 79-11-327.

§ 79-11-323. Filing of articles of merger.

After a plan of merger is approved by the board of directors, and if required by Section 79-11-321, by the members, the surviving or acquiring corporation shall deliver to the Secretary of State articles of merger setting forth:

(a) The plan of merger;

(b) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(c) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(ii) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class.

SOURCES: Laws, 1987, ch. 485, § 112, eff from and after January 1, 1988.

Cross References — Merger of corporations under Mississippi Business Corporation Act, see §§ 79-4-11.02 through 79-4-11.08.

Filing fees, see §§ 79-11-109.

Requirement that notice of meetings of members include a description of any matters which must be approved by the members under this section, see § 79-11-205.

Applicability of this section to merger of foreign business or nonprofit corporation with domestic nonprofit corporation, see § 79-11-327.

§ 79-11-325. Effects of merger.

(1) When a merger takes effect:

(a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation has all liabilities and obligations of each corporation party to the merger, provided that trust obligations upon property of a disappearing corporation shall be limited to the property affected thereby immediately prior to the time the merger is effective;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

SOURCES: Laws, 1987, ch. 485, § 113, eff from and after January 1, 1988.

Cross References — Merger of corporations under Mississippi Business Corporation Act, see §§ 79-4-11.02 through 79-4-11.08.

§ 79-11-327. Merger of foreign corporation with domestic corporation.

(1) One or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) The foreign corporation complies with Section 79-11-323 if it is the surviving corporation of the merger; and

(c) Each domestic nonprofit corporation complies with the applicable provisions of Sections 79-11-319 and 79-11-321 and, if it is the surviving corporation of the merger, with Section 79-11-323.

(2) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to have irrevocably appointed the Secretary of State as its agent for service of process in any proceeding brought against it.

SOURCES: Laws, 1987, ch. 485, § 114, eff from and after January 1, 1988.

Cross References — Merger of one or more domestic corporations with a domestic or foreign corporation, see § 79-4-11.02.

Merger of corporations under Mississippi Business Corporation Act, see §§ 79-4-11.02 through 79-4-11.08.

Filing fees, see § 79-11-109.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations § 2320. **CJS.** 14 C.J.S., Charities § 91.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 401-406.

§ 79-11-329. Sale, lease, exchange, or other disposition of property in regular course of business; mortgaging or otherwise encumbering property.

(1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness (with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(2) Unless the articles of incorporation require it, approval by the members of a transaction described in subsection (1) of this section is not required.

SOURCES: Laws, 1987, ch. 485, § 115, eff from and after January 1, 1988.

Cross References — Power of water, sewer, garbage disposal, or fire protection districts to buy, lease or otherwise acquire assets and facilities of nonprofit corporation organized pursuant to the Mississippi Nonprofit Corporation Act (§§ 79-11-101 et seq.), see § 19-5-181.

Disposition of corporation assets under Mississippi Business Corporation Act, see §§ 79-4-12.01, 79-4-12.02.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Effect of merger on the title to real estate and other property, see § 79-11-325.

Effect of dissolution on the title to corporation's property, see § 79-11-341.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2289, 2299.

CJS. 14 C.J.S., Charities § 72.

§ 79-11-331. Sale, lease, exchange, or other disposition of property not in regular course of business.

(1) A corporation may sell, lease, exchange or otherwise dispose of all, or substantially all, of its property (with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (2) of this section.

(2) Unless Section 79-11-101 et seq., the articles of incorporation, the bylaws, or the board of directors or members (acting pursuant to subsection (4) of this section) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) By the board of directors; and

(b) By the members of two-thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less.

(3) If the corporation does not have members the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with Section 79-11-259. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(4) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 79-11-205. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(6) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(7) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

SOURCES: Laws, 1987, ch. 485, § 116, eff from and after January 1, 1988.

Cross References — Disposition of corporation assets under Mississippi Business Corporation Act, see §§ 79-4-12.01, 79-4-12.02.

Effect of merger on the title to real estate and other property, see § 79-11-325.

Effect of dissolution on the title to corporation's property, see § 79-11-341.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Requirement that notice of meetings of members include a description of any matters which must be approved by the members under this section, see § 79-11-205.

RESEARCH REFERENCES

ALR. Right to assets of voluntarily dissolved lodge or club. 70 A.L.R.4th 897.

Am Jur. 19 Am. Jur. 2d, Corporations §§ 2289, 2299.

CJS. 14 C.J.S., Charities § 72.

§ 79-11-333. Dissolution by incorporators or directors of corporation that has no members.

(1) A majority of the incorporators or directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Secretary of State articles of dissolution.

(2) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with Section 79-11-259. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

(3) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

SOURCES: Laws, 1987, ch. 485, § 117, eff from and after January 1, 1988.

Cross References — Voluntary dissolution of corporation under Mississippi Business Corporation Act, see §§ 79-4-14.01 through 79-4-14.09.

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Requirement that notice of meetings of members include a description of any matters that must be approved by the members under this section, see § 79-11-205.

Application and distribution of assets of corporation in the process of voluntary dissolution pursuant to this section or § 79-11-335, see § 79-11-336.

RESEARCH REFERENCES

ALR. Distribution of funds by nonprofit corporation absent dissolution. 51 A.L.R.3d 1318.

Am Jur. 18A Am. Jur. 2d, Corporations § 776.

19 Am. Jur. 2d, Corporations § 2354.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 461, 462, 471-473.

6 Am. Jur. Legal Forms 2d, Corporations § 74:842.

6A Am. Jur. Legal Forms 2d, Corporations § 74:2434.

CJS. 14 C.J.S., Charities § 91.

§ 79-11-335. Approval of dissolution by board of directors or members; notice requirements.

(1) Unless Section 79-11-101 et seq., the articles of incorporation, the bylaws or the board of directors or members (acting pursuant to subsection (3) of this section) require a greater vote or voting by class, dissolution is authorized if it is approved:

(a) By the board of directors; and

(b) By the members, if any, by two-thirds ($\frac{2}{3}$) of the votes cast, or a majority of the voting power, whichever is less.

(2) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with Section 79-11-259. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with Section 79-11-205. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

SOURCES: Laws, 1987, ch. 485, § 118, eff from and after January 1, 1988.

Cross References — Voluntary dissolution of corporation under Mississippi Business Corporation Act, see §§ 79-4-14.01 through 79-4-14.09

Petition to chancery court for alternative method for calling or conducting meetings of members, delegates or directors, or for obtaining their consent, see § 79-11-131.

Requirement that notice of meetings of members include a description of any matters that must be approved by the members under this section, see § 79-11-205.

Application and distribution of assets of corporation in the process of voluntary dissolution pursuant to § 79-11-333 or this section, see § 79-11-336.

RESEARCH REFERENCES

ALR. Right to assets of voluntarily dissolved lodge or club. 70 A.L.R.4th 897.

Am Jur. 7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 451-453, 461, 462, 471-473, 481.

6 Am. Jur. Legal Forms 2d, Corporations §§ 74:842, 74:2434.

CJS. 14 C.J.S., Charities § 91.

§ 79-11-336. Application and distribution of assets of voluntarily dissolving corporation.

The assets of a corporation in the process of voluntary dissolution pursuant to Section 79-11-333 or Section 79-11-335 shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(c) If the corporation to be dissolved is a charitable organization, as defined in Section 79-11-501, the remaining assets shall be transferred to another charitable organization or other charitable organizations, as defined in Section 79-11-501, either domestic or foreign, engaged in activities substantially similar to those of the dissolving corporation, or to the federal government, or to a state or local government, for a public purpose. For all other nonprofit corporations, assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.

(d) Other assets not described above, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others.

SOURCES: Laws, 2009, ch. 547, § 1, eff from and after July 1, 2009.

§ 79-11-337. Contents and filing of articles of dissolution.

(1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State articles of dissolution setting forth:

- (a) The name of the corporation;
- (b) The date dissolution was authorized;
- (c) A statement that dissolution was approved by a sufficient vote of the board;
- (d) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
- (e) That all remaining property and assets of the corporation have been distributed among its members in accordance with their respective rights and interest, or have been otherwise distributed pursuant to the articles or bylaws of the corporation; or, in the case of a corporation which is also a charitable organization, as defined in Section 79-11-501, that the remaining property and assets of the corporation have been transferred to another charitable organization or other charitable organizations, as defined in Section 79-11-501, either domestic or foreign, engaged in activities substantially similar to those of the dissolving corporation, or to the federal government, or to a state or local government, for a public purpose;
- (f) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;
- (g) If approval by members was required:
 - (i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and
 - (ii) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

SOURCES: Laws, 1987, ch. 485, § 119; Laws, 2009, ch. 547, § 2, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment, in (1), added (d) and (e), and redesignated former (d) and (e) as present (f) and (g).

Cross References — Filing fees; see § 79-11-109.

Applicability of this section to filing requirements for revocation of dissolution, see § 79-11-339.

RESEARCH REFERENCES

- Am Jur.** 19 Am. Jur. 2d, Corporations §§ 2352, 2354. 6 Am. Jur. Legal Forms 2d, Corporations § 74:842.
 7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 500, 501. **CJS.** 14 C.J.S., Charities § 91.

§ 79-11-339. Revocation of dissolution.

(1) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

- (a) The name of the corporation;
- (b) The effective date of the dissolution that was revoked;
- (c) The date that the revocation of dissolution was authorized;
- (d) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
- (e) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (f) If member action was required to revoke the dissolution, the information required by Section 79-11-337.

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

SOURCES: Laws, 1987, ch. 485, § 120, eff from and after January 1, 1988.

Cross References — Voluntary dissolution of corporation under Mississippi Business Corporation Act, see §§ 79-4-14.01 through 79-4-14.09

Filing fees, see § 79-11-109.

Dissolution effective upon the effective date of the articles of dissolution, see § 79-11-339.

§ 79-11-341. Winding up and liquidation.

(1) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (a) Preserving and protecting its assets and minimizing its liabilities;
 - (b) Discharging or making provision for discharging its liabilities and obligations;
 - (c) Disposing of its properties that will not be distributed in kind;
 - (d) Returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
 - (e) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws; and
 - (f) Doing every other act necessary to wind up and liquidate its assets and affairs.
- (2) Dissolution of a corporation does not:
- (a) Transfer title to the corporation's property;
 - (b) Subject its directors or officers to standards of conduct different from those prescribed in Sections 79-11-267 and 79-11-275;
 - (c) Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation or removal of its directors or officers or both; or change provisions for amending its bylaws;
 - (d) Prevent commencement of a proceeding by or against the corporation in its corporate name;
 - (e) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
 - (f) Terminate the authority of the registered agent.

SOURCES: Laws, 1987, ch. 485, § 121, eff from and after January 1, 1988.

Cross References — Voluntary dissolution of corporation under Mississippi Business Corporation Act, see §§ 79-4-14.01 through 79-4-14.09

Applicability of this section to administrative dissolution by Secretary of State, see § 79-11-349.

Applicability of this section to judicial dissolution of corporation, see § 79-11-361.

RESEARCH REFERENCES

<p>ALR. Dissolving or winding up affairs of corporation domiciled in another state. 19 A.L.R.3d 1279.</p>	<p>Am Jur. 19 Am. Jur. 2d, Corporations §§ 2299, 2488.</p> <p>CJS. 14 C.J.S., Charities § 91.</p>
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§ 79-11-343. Disposition of known claims against dissolved corporation.

(1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (a) Describe information that must be included in a claim;
- (b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline;

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(4) For purposes of this section “claim” does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

SOURCES: Laws, 1987, ch. 485, § 122, eff from and after January 1, 1988.

Cross References — Voluntary dissolution of corporation under Mississippi Business Corporation Act, see §§ 79-4-14.01 through 79-4-14.09

Dissolution effective upon the effective date of the articles of dissolution, see § 79-11-339.

Barring of claim against dissolved corporation where claimant did not receive written notice under this section, see § 79-11-345.

Applicability of this section to administrative dissolution by Secretary of State, see § 79-11-349.

Applicability of this section to judicial dissolution of a corporation, see § 79-11-361.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 91.

§ 79-11-345. Notice of dissolution and request for presentation of claims against corporation; statute of limitations; enforcement of claims.

(1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation’s principal office (or, if none in this state, its registered office) is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after publication of this notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following

claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two (2) years after the publication date of the newspaper notice:

(a) A claimant who did not receive written notice under Section 79-11-343;

(b) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved corporation, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

SOURCES: Laws, 1987, ch. 485, § 123, eff from and after January 1, 1988.

Cross References — Voluntary dissolution of corporation under Mississippi Business Corporation Act, see §§ 79-4-14.01 through 79-4-14.09

Dissolution effective upon effective date of articles of dissolution, see § 79-11-339.

Applicability of this section to administrative dissolution by Secretary of State, see § 79-11-349.

Applicability of this section to judicial dissolution of a corporation, see § 79-11-361.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities §§ 76, 77.

§ 79-11-347. Administrative dissolution by Secretary of State, grounds for.

The Secretary of State may commence a proceeding under Section 79-11-349 to administratively dissolve a corporation if:

(a) The corporation does not pay within sixty (60) days after they are due any taxes or penalties imposed by Section 79-11-101 et seq. or other law;

(b) The corporation does not deliver a requested status report to the Secretary of State within sixty (60) days after it is due;

(c) The corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(d) The corporation does not notify the Secretary of State within one hundred twenty (120) days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; or

(e) The corporation's period of duration, if any, stated in its articles of incorporation expires.

SOURCES: Laws, 1987, ch. 485, § 124, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Administrative dissolution under Mississippi Business Corporation Act, see §§ 79-4-14.20 through 79-4-14.23.

Application by corporation for reinstatement after administrative dissolution, see § 79-11-351.

RESEARCH REFERENCES

Am Jur. 19 Am. Jur. 2d, Corporations § 2397. **CJS.** 14 C.J.S., Charities § 107.

7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 511-525.

§ 79-11-349. Administrative dissolution, procedures.

(1) Upon determining that one or more grounds exist under Section 79-11-347 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination under Section 79-11-169.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within at least sixty (60) days after service of the notice is perfected under Section 79-11-169, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under Section 79-11-169.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under Section 79-11-341 and notify its claimants under Sections 79-11-343 and 79-11-345.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

SOURCES: Laws, 1987, ch. 485, § 125, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Administrative dissolution under Mississippi Business Corporation Act, see §§ 79-4-14.20 through 79-4-14.23.

Filing fees, see § 79-11-109.

Application by corporation for reinstatement after administrative dissolution, see § 79-11-351.

RESEARCH REFERENCES

Am Jur. 7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 511-525.

§ 79-11-351. Reinstatement after administrative dissolution.

(1) A corporation administratively dissolved under Section 79-11-349 may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must:

- (a) Recite the name of the corporation and the effective date of its administrative dissolution;
- (b) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (c) State that the corporation's name satisfies the requirements of Section 79-11-157; and
- (d) Contain a certificate from the State Tax Commission reciting that all taxes owed by the corporation have been paid.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate and serve a copy on the corporation under Section 79-11-169.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

SOURCES: Laws, 1987, ch. 485, § 126; Laws, 1993, ch. 368, § 15; Laws, 2009, ch. 527, § 5, eff from and after July 1, 2009.

Editor's Note — Effective July 1, 2010, Section 27-3-4 provides that the terms "Mississippi State Tax Commission," "State Tax Commission," "Tax Commission" and "commission" appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Amendment Notes — The 2009 amendment substituted "at any time" for "within five (5) years" in the first sentence of the introductory language of (1).

Cross References — State Tax Commission generally, see §§ 27-3-1 et seq.

Administrative dissolution under Mississippi Business Corporation Act, see §§ 79-4-14.20 through 79-4-14.23.

Filing fees, see § 79-11-109.

RESEARCH REFERENCES

ALR. Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 A.L.R.4th 392.

§ 79-11-353. Denial of application for reinstatement following administrative dissolution; appeals.

(1) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under Section 79-11-169 with a written notice that explains the reason or reasons for denial.

(2) The corporation may appeal the denial of reinstatement to the chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located within ninety (90) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 485, § 127, eff from and after January 1, 1988.

Cross References — Administrative dissolution under Mississippi Business Corporation Act, see §§ 79-4-14.20 through 79-4-14.23.

Chancery court's power to dissolve nonprofit corporation and to hear appeal from Secretary of State's denial of reinstatement following administrative dissolution, see §§ 79-11-353 and 79-11-355.

§ 79-11-355. Dissolution by court order; parties who may bring action; grounds for court-ordered dissolution.

(1) The chancery court of the county where the corporation's principal office (or, if none in this state, its registered office) is located may dissolve a corporation:

(a) In a proceeding by the Attorney General or the Secretary of State if it is established that:

(i) The corporation obtained its articles of incorporation through fraud;

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law; or

(iii) If the corporation is a charitable organization, as defined in Section 79-11-501, that:

1. The corporate assets are being misapplied or wasted;

2. The corporation is unable to carry out its purpose(s); or

3. The corporation has violated the laws regulating the solicitation of charitable contributions, Section 79-11-501 et seq.

(b) In a proceeding by fifty (50) members or members holding five percent (5%) of the voting power, whichever is less, or by a director if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(iii) The members are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired; or

(iv) The corporate assets are being misapplied or wasted;

(c) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether there are reasonable alternatives to dissolution.

SOURCES: Laws, 1987, ch. 485, § 128; Laws, 2009, ch. 547, § 3, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment rewrote (1)(a).

Cross References — Judicial dissolution under Mississippi Business Corporation Act, see §§ 79-4-14.30 through 79-4-14.34.

Filing fees, see § 79-11-109.

Decree of judicial dissolution, see § 79-11-361.

RESEARCH REFERENCES

ALR. Relief other than by dissolution in cases of intracorporate deadlock or dissension. 34 A.L.R.4th 13.

Am Jur. 19 Am. Jur. 2d, Corporations § 2397.

CJS. 14 C.J.S., Charities § 91.

§ 79-11-357. Court-ordered dissolution, venue; appropriate party defendants; authority of court with respect to.

(1) Venue for a proceeding to dissolve a corporation lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the activities of the corporation until a full hearing can be held.

SOURCES: Laws, 1987, ch. 485, § 129, eff from and after January 1, 1988.

Cross References — Judicial dissolution under Mississippi Business Corporation Act, see §§ 79-4-14.30 through 79-4-14.34.

RESEARCH REFERENCES

ALR. Relief other than by dissolution in cases of intracorporate deadlock or dissension. 34 A.L.R.4th 13.

Place where corporation is doing business for purposes of state venue statute. 42 A.L.R.5th 221.

Am Jur. 7A Am. Jur. Pl & Pr Forms (Rev), Corporations, Forms 511-525.

CJS. 14 C.J.S., Charities § 91.

§ 79-11-359. Issuance of injunctions; appointment of receivers or custodians; application and distribution of corporation assets or proceeds from sale or other disposition.

(1) A court in a judicial proceeding brought to dissolve a corporation shall have the power to issue injunctions and may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign business or nonprofit corporation (authorized to transact business in this state) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state;

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members and creditors.

(5) The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied and distributed as the court may order, after taking into account the following standards:

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall, to the extent that unencumbered assets are available therefor, be paid first toward the payment of costs and expenses of the court proceedings, and then toward other liabilities and obligations of the corporation.

(b) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the court shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

(c) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements.

(d) If the corporation to be dissolved is a charitable organization, as defined in Section 79-11-501, the remaining assets shall be transferred to another charitable organization or other charitable organizations, as defined in Section 79-11-501, either domestic or foreign, engaged in activities substantially similar to those of the dissolving corporation, or to the federal government, or to a state or local government, for a public purpose. For all other nonprofit corporations, assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation as the court may direct.

(e) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others.

(f) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

SOURCES: Laws, 1987, ch. 485, § 130; Laws, 2009, ch. 547, § 4, eff from and after July 1, 2009.

Amendment Notes — The 2009 amendment inserted “shall have the power to issue injunctions and” in the first sentence of (1); and added (5).

Cross References — Judicial dissolution under Mississippi Business Corporation Act, see §§ 79-4-14.30 through 79-4-14.34.

Application to religious corporations, see § 79-11-403.

RESEARCH REFERENCES

CJS. 14 C.J.S., Charities § 91.

§ 79-11-361. Decree of judicial dissolution.

(1) If after the hearing the court determines that one or more grounds for judicial dissolution described in Section 79-11-355 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with Section 79-11-341 and the notification of its claimants in accordance with Sections 79-11-343 and 79-11-345.

SOURCES: Laws, 1987, ch. 485, § 131, eff from and after January 1, 1988.

Cross References — Judicial dissolution under Mississippi Business Corporation Act, see §§ 79-4-14.30 through 79-4-14.34.

Filing fees, see § 79-11-109.

§ 79-11-363. Foreign corporations, authority to transact business; transacting business defined.

(1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining, defending or settling any proceeding;

(b) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce.

(3) The list of activities in subsection (2) of this section is not exhaustive.

SOURCES: Laws, 1987, ch. 485, § 132, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

Foreign corporation authorized to transact business in this state on the effective date of §§ 79-11-101 et seq. is not required to obtain new certificate of authority, see § 79-11-397.

RESEARCH REFERENCES

ALR. Effect of execution of foreign corporation's contract which, while executory, was unenforceable because of non-compliance with conditions of doing business in state. 7 A.L.R.2d 256.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 170 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Forms 31, 32.

4 Am. Jur. Proof of Facts 483, Doing Business.

Lawyers' Edition. State venue provisions for civil actions as violating equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 119 L. Ed. 2d 665.

§ 79-11-365. Foreign corporation transacting business without certificate of authority not to maintain proceeding in any court; stay of proceeding until certificate obtained; penalty for transacting business without certificate of authority.

(1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation, its successor or assignee requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of Five Dollars (\$5.00) for each day, but not to exceed a total of two (2) times the fee required under Section 79-11-109 for securing articles of incorporation for each year, it

transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection.

SOURCES: Laws, 1987, ch. 485, § 133, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

Foreign corporation authorized to transact business in this state on the effective date of §§ 79-11-101 et seq. is not required to obtain new certificate of authority, see § 79-11-397.

RESEARCH REFERENCES

ALR. Construction work by foreign corporation as doing business for purposes of statute requiring foreign corporation to qualify as condition of access to local courts. 90 A.L.R.3d 937.

Application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute as affected by compliance after commencement of action. 23 A.L.R.5th 744.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 170 et seq., 240 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Forms 31, 32.

Lawyers' Edition. State venue provisions for civil actions as violating equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 119 L. Ed. 2d 665.

§ 79-11-367. Foreign corporation, application for certificate of authority.

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of Section 79-11-373;

(b) The name of the state or country under whose law it is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The address of its registered office in this state and the name of its registered agent at that office;

(f) The names and usual business or home addresses of its current directors and officers; and

(g) Whether the foreign corporation has members.

(2) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import), dated not more than sixty (60) days prior to the date the application is filed in this state, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated.

SOURCES: Laws, 1987, ch. 485, § 134, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

Filing fees, see § 79-11-109.

Applicability of this section to a foreign corporation's obtaining an amended certificate of authority, see § 79-11-369.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 219 et seq.

Lawyers' Edition. State venue provisions for civil actions as violating equal

protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 119 L. Ed. 2d 665.

§ 79-11-369. Foreign corporation, amended certificate of authority.

(1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

- (a) Its corporate name;
- (b) The period of its duration; or
- (c) The state or country of its incorporation.

(2) The requirements of Section 79-11-367 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

SOURCES: Laws, 1987, ch. 485, § 135, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

Filing fees, see § 79-11-109.

Applicability of this section to change of name of foreign corporation authorized to transact business, see § 79-11-373.

§ 79-11-371. Effect of certificate of authority.

(1) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in Section 79-11-101 et seq.

(2) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as, and except as otherwise provided by Section 79-11-101 et seq. is subject to the same duties, restrictions, penalties, liabilities now or later imposed on, a domestic corporation of like character.

(3) Section 79-11-101 et seq. do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

SOURCES: Laws, 1987, ch. 485, § 136, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10..

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 186 et seq..

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, §§ 11 et seq.

§ 79-11-373. Corporate name of foreign corporation.

(1) If the corporate name of a foreign corporation does not satisfy the requirements of Section 79-11-157, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4) of this section, the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(a) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under Section 79-11-159 or 79-11-161 or pursuant to the Mississippi Business Corporation Act;

(c) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state.

(3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation (incorporated or authorized to transact business in this state) that is not distinguishable upon the records of the Secretary of State from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation;

(b) Has been formed by reorganization of the other corporation; or

(c) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of

Section 79-11-157, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of Section 79-11-157 and obtains an amended certificate of authority under Section 79-11-369.

SOURCES: Laws, 1987, ch. 485, § 137, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

Filing fees, see § 79-11-109.

Applicability of this section to the registration of the name of a foreign corporation, see § 79-11-161.

Applicability of this section to application by foreign corporation for certificate of authority to transact business, see § 79-11-367.

RESEARCH REFERENCES

ALR. Right of benevolent or fraternal society or organization to protection against use of same or similar name, insignia, or ritual by another organization. 76 A.L.R.2d 1396.

Right to protection of corporate name, as between domestic corporation and foreign corporation not qualified to do business in state. 26 A.L.R.3d 994.

Right of charitable or religious association or corporation to protection against

use of same or similar name by another. 37 A.L.R.3d 277.

Am Jur. 18A Am. Jur. 2d, Corporations §§ 240, 241, 244.

36 Am. Jur. 2d, Foreign Corporations §§ 163 et seq.

Law Reviews. Walker, Common law protection of economic expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March, 1979.

§ 79-11-375. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(a) A registered office with the same address as that of its registered agent; and

(b) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office;

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office; or

(iv) A resident agent designated prior to January 1, 1988.

SOURCES: Laws, 1987, ch. 485, § 138; Laws, 1988, ch. 417, § 7, eff from and after July 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

RESEARCH REFERENCES

ALR. Federal or state law as controlling, in diversity action, whether foreign corporation is amenable to service of process in state. 6 A.L.R.3d 1103.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 228-234.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, §§ 11 et seq.

§ 79-11-377. Change of registered office or registered agent of foreign corporation.

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

- (a) Its name;
- (b) The street address of its current registered office;
- (c) If the current registered office is to be changed, the street address of its new registered office;
- (d) The name of its current registered agent;
- (e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
- (f) A representation that after the change or changes are made, the street address of its registered office and the office of its registered agent will be identical.

(2) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

SOURCES: Laws, 1987, ch. 485, § 139, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

Filing fees, see § 79-11-109.

Failure of foreign corporation to comply with requirements of this section as ground for revocation of corporation's certificate of authority, see § 79-11-385.

RESEARCH REFERENCES

ALR. Federal or state law as controlling, in diversity action, whether foreign

corporation is amenable to service of process in state. 6 A.L.R.3d 1103.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 231-234.

§ 79-11-379. Resignation of registered agent of foreign corporation.

(1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the Secretary of State for filing the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent status report or, in the case of a foreign corporation that has not yet filed a status report, in its application for a certificate of authority.

(3) The agency is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

SOURCES: Laws, 1987, ch. 485, § 140, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

Requirements for filing documents, see § 79-11-105.

Filing fees, see § 79-11-109.

Obligations of Secretary of State with respect to filing of documents, see § 79-11-115.

§ 79-11-381. Service of process on foreign corporation.

(1) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent status report filed under Section 79-11-391 if the foreign corporation:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from transacting business in this state under Section 79-11-383; or

(c) Has had its certificate of authority revoked under Section 79-11-387.

(3) Service is perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

SOURCES: Laws, 1987, ch. 485, § 141, eff from and after January 1, 1988.

Cross References — Foreign corporations, certificate of authority to transact business in state, corporate name, etc., under Mississippi Business Corporation Act, see §§ 79-4-15.01 through 79-4-15.10.

Applicability of this section to time period for foreign corporation to appeal revocation of its certificate of authority, see § 79-11-389.

RESEARCH REFERENCES

ALR. Federal or state law as controlling, in diversity action, whether foreign corporation is amenable to service of process in state. 6 A.L.R.3d 1103.

Who is “general” or “managing” agent of foreign corporation under statute autho-

rizing service of process on such agent. 17 A.L.R.3d 625.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 230-234.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, §§ 11 et seq.

§ 79-11-383. Withdrawal of foreign corporation.

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) A representation that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) A representation that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) A mailing address to which the Secretary of State may mail a copy of any process served on him or her under paragraph (c) of this subsection; and

(e) A commitment to notify the Secretary of State in the future of any change in the mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the

process to the foreign corporation at the post-office address set forth in its application for withdrawal.

SOURCES: Laws, 1987, ch. 485, § 142, eff from and after January 1, 1988.

Cross References — Withdrawal of foreign corporation under Mississippi Business Corporation Act, see § 79-4-15.20.

Filing fees, see § 79-11-109.

Applicability of this section to service of process on a foreign corporation, see § 79-11-381.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 413 et seq.

§ 79-11-385. Revocation of certificate of authority of foreign corporation, grounds.

(1) The Secretary of State may commence a proceeding under Section 79-11-387 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) The foreign corporation does not deliver the status report to the Secretary of State within sixty (60) days after it is due;

(b) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Section 79-11-101 et seq. or other law;

(c) The foreign corporation is without a registered agent or registered office in this state for sixty (60) days or more;

(d) The foreign corporation does not inform the Secretary of State under Section 79-11-377 or 79-11-379 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety (90) days of the change, resignation or discontinuance;

(e) An incorporator, director, officer or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(f) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

(2) The Attorney General may commence a proceeding under Section 79-11-387 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the corporation has continued to exceed or abuse the authority conferred upon it by law.

SOURCES: Laws, 1987, ch. 485, § 143, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Revocation of certificate of authority under Mississippi Business Corporation Act, see §§ 79-4-15.30 through 79-4-15.33.

Applicability of this section to notice requirements for issuance of revocation of certificate of authority, see § 79-11-387.

RESEARCH REFERENCES

ALR. Reinstatement of repealed, forfeited, expired, or suspended corporate charter as validating interim acts of corporation. 42 A.L.R.4th 392.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 189 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Forms 31, 32.

Lawyers' Edition. State venue provisions for civil actions as violating equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 119 L. Ed. 2d 665.

§ 79-11-387. Issuance of certificate of revocation.

(1) The Secretary of State upon determining that one or more grounds exist under Section 79-11-385 for revocation of a certificate of authority shall serve the foreign corporation with written notice of that determination under Section 79-11-381.

(2) The Attorney General upon determining that grounds exist under Section 79-11-385(2) for revocation of a certificate of authority shall request the Secretary of State to serve, and the Secretary of State shall serve the foreign corporation with written notice of that determination under Section 79-11-381.

(3) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State or Attorney General that each ground for revocation determined by the Secretary of State or Attorney General does not exist within sixty (60) days after service of the notice is perfected under Section 79-11-381, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under Section 79-11-381.

(4) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(5) The Secretary of State's revocation of a foreign corporation's certificate of authority appoints the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent status report or in any subsequent communications received from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

(6) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

SOURCES: Laws, 1987, ch. 485, § 144, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Attorney General generally, see §§ 7-5-1 et seq.

Revocation of certificate of authority under Mississippi Business Corporation Act, see §§ 79-4-15.30 through 79-4-15.33.

Filing fees, see § 79-11-109.

Applicability of this section to service of process on a foreign corporation, see § 79-11-381.

Grounds for revocation of certificate of authority of foreign corporation, see § 79-11-385.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 189 et seq.

12 Am. Jur. Pl & Pr Forms (Rev), Foreign Corporations, Forms 31, 32.

§ 79-11-389. Appeal of revocation.

(1) A foreign corporation may appeal the Secretary of State's revocation of its certificate of authority to the chancery court of the county in which its registered office in this state is located within thirty (30) days after the service of the certificate of revocation is perfected under Section 79-11-381. The foreign corporation applies by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

SOURCES: Laws, 1987, ch. 485, § 145, eff from and after January 1, 1988.

Cross References — Revocation of certificate of authority under Mississippi Business Corporation Act, see §§ 79-4-15.30 through 79-4-15.33.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 189 et seq.

§ 79-11-391. Status report of corporation.

(1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall upon request deliver to the Secretary of State a status report on a form prescribed and furnished by the Secretary of State that sets forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The address of its registered office and the name of its registered agent at the office in this state or the address and name of the person designated as its resident agent prior to January 1, 1988;

(c) The address of its principal office;

(d) The names and business or residence addresses of its directors and principal officers;

(e) A brief description of the nature of its activities; and

(f) Whether or not it has members.

(2) Upon receiving the request for a status report, a domestic or foreign corporation shall have ninety (90) days to deliver the report to the Secretary of State.

(3) The information in the status report must be current on the date the status report is executed on behalf of the corporation.

(4) The Secretary of State may request a status report from time to time, but not more frequently than once every five (5) years, beginning five (5) years from the date upon which a domestic corporation was incorporated or a foreign corporation was authorized to transact business.

(5) If a status report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty (30) days after the effective date of notice, it is deemed to be timely filed.

SOURCES: Laws, 1987, ch. 485, § 146; Laws, 1988, ch. 417, § 8, eff from and after July 1, 1988.

Cross References — Filing fees, see § 79-11-109.

Requirement that corporation keep copy of most recent status report delivered to Secretary of State under this section, see § 79-11-283.

Applicability of this section to service of process on a foreign corporation, see § 79-11-381.

§ 79-11-393. Rural water companies, special requirements.

Rural water companies organized pursuant to Section 79-11-101 et seq. shall be subject to the following requirements in order to obtain federal tax exemptions:

(a) Each rural water company shall maintain a roster of all members which shall include the date upon which each member joined.

(b) Each rural water company shall maintain a roster of patrons which shall include periodic data as to services rendered by the water company. Such roster shall be the basis for any distribution of excess revenues of the water company. Any such distribution shall be to the members and shall be based upon patronage for the time period over which such excess revenues to be distributed were collected, and the loss of membership by death or

otherwise shall not terminate the rights and interest of such member in any patronage distribution due him at the termination of his membership. Any amount to be distributed shall be net income or funds in excess of those needed to meet current losses and operating expenses; provided, that such amount to be distributed shall be in excess of that needed for normal, reasonable business purposes.

Before a rural water company shall construct, operate or maintain a water transmission or distribution system for the sale of water to the public, it shall obtain a certificate of public convenience and necessity from the Public Service Commission, pursuant to the provisions of Sections 77-3-1 through 77-3-87.

SOURCES: Laws, 1987, ch. 485, § 147, eff from and after January 1, 1988.

§ 79-11-394. Rural waterworks corporations; financial reports; contents; notice; failure to file report; notice of annual meeting.

(1)(a) Any nonprofit, nonshare corporation chartered under the Mississippi Nonprofit Corporation Act, Section 79-11-101 et seq., for the purpose of owning and operating rural waterworks annually shall prepare a financial report showing the financial condition of the corporation. The financial report shall be prepared on forms provided by the State Auditor within ninety (90) days following the close of the fiscal year of that corporation. Each report shall contain a certification signed by the president of the board of directors of the corporation that the president has reviewed the information contained in the financial report and that the information is true and correct.

(b) As part of the billing statement received by the subscriber immediately before the annual meeting of the corporation, each corporation owning and operating rural waterworks shall notify each subscriber provided water service by the corporation of the availability of the most recently completed annual financial report, how that report may be obtained and where the report may be reviewed. If requested in writing, the corporation shall provide a copy of the financial report to any subscriber.

(c) Before July 1, 1999, and July 1 of each subsequent year, each corporation required to prepare a financial report under this section shall submit the most recently completed annual financial report to the State Auditor. In addition, the corporation shall provide a copy of that financial report to the public library in the county seat of the county in which the corporation's principal office is located. If no public library is located in the county seat, the corporation shall provide that report to the public library serving the largest population in the county of the corporation's principal office. If requested in writing, the State Auditor shall provide a copy of the financial report to any subscriber of a water system owned and operated by that corporation and may recover the costs of providing that report.

(2) In addition to the information required under subsection (1) of this section, each financial report shall contain the following:

(a) A statement certifying that an annual meeting was held in accordance with the corporation's bylaws, as required under Section 79-11-197, including the date of the most recent annual meeting;

(b) A list of the directors currently serving on the board of the corporation; and

(c) A list of those directors required who have failed to meet the management training requirements under Section 41-26-101.

(3)(a) Before July 15, 1999, and July 15 of each subsequent year, the State Auditor shall provide the State Department of Health a list of all corporations failing to file a report as required under subsection (1) of this section. The State Department of Health shall notify the president of the board of directors of each listed system in writing and shall require that the financial report be submitted to the State Auditor within thirty (30) days after the date of the letter.

(b) If any corporation required to prepare a financial report under this section fails to notify subscribers of the availability of the financial report, no corporate action taken after the date of the annual meeting shall be valid. If any corporation required to prepare a financial report under this section fails to submit the most recently completed annual financial report to the State Auditor, no corporate action taken after the date for submission specified in the letter from the State Department of Health, as required under paragraph (a) of this subsection, shall be valid.

(4)(a) Each nonprofit, nonshare corporation chartered under Section 79-11-101 et seq. for the purpose of owning and operating rural waterworks shall mail to each subscriber provided water service by the corporation, as part of the billing statement received by the subscriber immediately before the annual meeting of the corporation, a notice of the annual meeting of the corporation. Each corporation also shall submit, at the time the notice is provided to the subscribers, a copy of that notice to the State Department of Health.

(b) If any corporation fails to provide notice as required under this subsection, no corporate action taken after the date stated in or fixed in accordance with the corporation's bylaws for the annual meeting shall be valid.

(5) If any nonprofit, nonshare corporation chartered under Section 79-11-101 et seq. for the purpose of owning and operating rural waterworks fails to hold an annual meeting, no corporate action taken after the date stated in or fixed in accordance with the corporation's bylaws for the annual meeting shall be valid.

SOURCES: Laws, 1998, ch. 569, § 1, eff from and after July 1, 1998.

Editor's Note — Section 7-7-2 provides that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of the Auditor's functions shall mean the State Fiscal Officer whenever they appear. Section 27-104-6 provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 79-11-395. Application to pre-existing domestic nonprofit, nonshare corporations.

Section 79-11-101 et seq. apply to all domestic nonprofit, nonshare corporations in existence on its effective date that were incorporated under Section 79-11-1 or any predecessor thereto.

SOURCES: Laws of 1987, ch. 485, § 148, eff from and after January 1, 1988.

Editor's Note — Former § 79-11-1, referred to in this section, was repealed by Laws of 1987, ch. 485, § 153 eff from and after January 1, 1988.

§ 79-11-397. Application to pre-existing foreign corporations authorized to transact business.

(1) A foreign corporation authorized to transact business in this state on January 1, 1988, Section 79-11-101 et seq. is subject to Section 79-11-101 et seq. but is not required to obtain a new certificate of authority to transact business under Section 79-11-101 et seq.

(2) A foreign corporation domesticated in this state on January 1, 1988, is subject to Section 79-11-101 et seq., and its status shall automatically change from a foreign corporation domesticated in this state to that of a foreign corporation authorized to transact business in this state, and such corporation is not required to obtain a new certificate of authority to transact business under Section 79-11-101 et seq.

SOURCES: Laws, 1987, ch. 485, § 149; Laws, 1988, ch. 417, § 9, eff from and after July 1, 1988.

§ 79-11-399. Effect of repeal of prior statutes.

(1) Except as provided in subsection (2) of this section, the repeal of a statute by Section 79-11-101 et seq. does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(c) Any violation of the statute or any penalty, forfeiture or punishment incurred because of the violation before its repeal;

(d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(e) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(2) If a penalty or punishment imposed for violation of a statute repealed by Section 79-11-101 et seq. is reduced by Section 79-11-101 et seq., the penalty

or punishment, if not already imposed, shall be imposed in accordance with Section 79-11-101 et seq.

SOURCES: Laws, 1987, ch. 485, § 150, eff from and after January 1, 1988.

§ 79-11-401. Application to religious corporations.

Except as may be otherwise provided in Sections 79-11-31, 79-11-33 and 79-11-403, Section 79-11-101 et seq. apply to religious corporations.

SOURCES: Laws, 1988, ch. 417, § 10, eff from and after July 1, 1988.

§ 79-11-403. Certain provisions inapplicable to religious corporations; religious doctrine controlling in case of inconsistencies.

(1) The following provisions shall not apply to religious corporations unless otherwise provided in their articles or bylaws:

- (a) Section 79-11-133
- (b) Section 79-11-189
- (c) Section 79-11-193
- (d) Section 79-11-213
- (e) Section 79-11-239
- (f) Section 79-11-245
- (g) Section 79-11-282
- (h) Section 79-11-359

(2) If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of Section 79-11-101 et seq. on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the Constitution of this state or both.

SOURCES: Laws, 1988, ch. 417, § 11, eff from and after July 1, 1988.

Cross References — Application to religious corporations, generally, see § 79-11-401.

REGULATION OF CHARITABLE SOLICITATIONS

SEC.

- 79-11-501. Definitions.
- 79-11-503. Registration statement; filing fee; forms; records; exceptions; final report upon expiration of registration of corporation opting not to renew registration; report contents.
- 79-11-504. Authority of Secretary of State to promulgate rules and regulations.
- 79-11-505. Exemption from provisions; notice of exemption; burden of proof.
- 79-11-507. Reports to Secretary of State; financial statements; extension of due date for filing financial statements; administrative penalties.
- 79-11-509. Effective date of registration; denial, suspension or revocation of registration or exemption; grounds for denial, suspension or revocation; procedure; violations and penalties.

- 79-11-511. Out-of-state organization; service of process.
- 79-11-513. Registration as professional fund-raiser or fund-raising counsel; bond; filing annual report.
- 79-11-515. Contracts; filing with Secretary of State.
- 79-11-517. Registration as professional solicitor in employ of professional fund-raiser.
- 79-11-518. Records of solicitation activities.
- 79-11-519. Powers and duties of district attorneys and county prosecuting attorneys; violations of Sections 79-11-501 through 79-11-529.
- 79-11-521. Investigations of violations; written statements as to facts and circumstances; publication of information concerning violations; authority to administer oaths, subpoena witnesses, take evidence, require production of books, papers, etc.
- 79-11-523. Use of names, symbol or statement during solicitations for contributions; disclosure requirements for professional fund raisers.
- 79-11-524. Restrictions on hours of telephone solicitation.
- 79-11-525. Fiduciary responsibility of person soliciting, collecting, or expending contributions.
- 79-11-526. Sponsors and advertisers of events liable only when having control or supervision of events.
- 79-11-527. Reciprocal agreements with other states; public access to registration records.
- 79-11-529. Fines and penalties.

§ 79-11-501. Definitions.

The following words and phrases as used in Sections 79-11-501 through 79-11-529 shall have the meanings ascribed herein unless a different meaning is required by the context:

(a)(i) "Charitable organization" means either of the following:

(A) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code; or

(B) Any person actually or purporting to be established for any voluntary health and welfare, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations, or any person employing in any manner a charitable appeal as the basis of any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation and includes each local, county or area division within this state of such charitable organization, provided such local, county or area division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.

(ii) "Charitable organization" is not limited to only those organizations to which contributions are tax deductible under Section 170 of the Internal Revenue Code.

(iii) "Charitable organization" does not include any bona fide duly constituted religious institutions and such separate groups or corporations which form an integral part of religious institutions, provided that:

(A) Such religious institutions, groups or corporations are tax exempt pursuant to the Internal Revenue Code;

(B) No part of their net income inures to the direct benefit of any individual; and

(C) Their conduct is primarily supported by government grants or contracts, funds solicited from their own membership, congregations or previous donors, and fees charged for services rendered.

(b) "Charitable purpose" means either of the following:

(i) Any purpose described in Section 501(c)(3) of the Internal Revenue Code; or

(ii) Any voluntary health and welfare, charitable, benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other eleemosynary purpose or for the benefit of law enforcement personnel, fire fighters, or other public safety organizations;

"Charitable purpose" is not limited to only those purposes for which contributions are tax deductible under Section 170 of the Internal Revenue Code.

(c) "Container" means any box, carton, package, receptacle, canister, jar, dispenser, or machine that offers a product for sale or distribution which is or purports to be a solicitation of contributions for a charitable purpose.

(d) "Contribution" means the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of an organization for membership fees, dues, fines, assessments or for services rendered to individual members, if membership in such organization confers a bona fide right, privilege, professional standing, honor or other direct benefit, other than the right to vote, elect officers or hold offices, and except money or property received from any governmental authority. Reference to the dollar amount of "contributions" in Sections 79-11-501 through 79-11-529 means in the case of promises to pay, or payments for merchandise or rights of any other description, the value of the total amount promised to be paid or paid for such merchandise or rights and not merely that portion of the purchase price to be applied to a charitable purpose.

(e) "Fund-raising counsel" means a person (i) who for a fixed fee or rate under a written agreement plans, manages, advises or consults with respect to the solicitation in this state of contributions by a charitable organization, (ii) who neither solicits contributions nor directly or indirectly employ, procure or engage any person compensated to solicit contributions, and (iii) who does not at any time, whether directly or indirectly, receive or have custody or control of contributions. A bona fide nontemporary salaried officer or employee of a charitable organization shall not be deemed to be a fund-raising counsel. No attorney, accountant or banker who renders professional services to a charitable organization or advises a person to make a charitable contribution during the course of rendering professional services to that person shall be deemed, as a result of the professional service or advice rendered, to be a fund-raising counsel.

(f) "Person" means any individual, organization, group, association, partnership, corporation, trust or any combination of them or any other entity however established within or without this state.

(g) "Professional fund-raiser" means any person who for compensation or other consideration is retained by a charitable organization to solicit in or from this state contributions for charitable purposes directly or in the form of payment for goods, services or admission to fund-raising events, whether such solicitation is performed personally or through his agents, servants or employees or through agents, servants or employees especially employed by or for a charitable organization who are engaged in the solicitation of contributions, the sale of goods or services or the production of fund-raising events under the direction of such person, or a person who plans, conducts, manages, carries on, advises or consults, whether directly or indirectly, in connection with the solicitation of contributions, sale of goods or services or the production of fund-raising events for or on behalf of any charitable organization, but does not qualify as a fund-raising counsel within the meaning of Sections 79-11-501 through 79-11-529, or who engages in the business of or holds himself out as independently engaged in the business of soliciting contributions for such purposes. A bona fide officer or employee of a charitable organization shall not be deemed a professional fund-raiser unless his salary or other compensation is paid as a commission which is computed on the basis of funds to be raised or actually raised.

(h) "Professional solicitor" means any person who is employed or retained for compensation by a professional fund-raiser to solicit contributions for charitable purposes from persons in this state.

(i) "Public safety organization" means a nongovernmental organization that uses in its name, whether in a publication of the organization, in a solicitation for contributions to the organizations, for membership in the organization, or to purchase advertising in a publication of the organization, or in a solicitation to purchase products or tickets to an event sponsored by or for the benefit of the organization by a solicitor, the term officer, peace officer, police officer, police law enforcement, reserve officer, deputy, deputy sheriff, constable, deputy constable, fireman, fire fighter, volunteer fireman, emergency medical service provider, civil employee or any other term in a manner that reasonably implies that the organization or that a contribution, purchase or membership will benefit public safety personnel.

(j) "Solicitation" or "solicit" means the request, directly or indirectly, for money, credit, property, financial assistance, or any other thing of value on the plea or representation that such money, credit, property, financial assistance, or any other thing of value or a portion of it will be used for a charitable purpose or will benefit a charitable organization. "Solicitation" or "solicit" includes, but is not limited to, the following methods of requesting or securing money, credit, property, financial assistance or any other thing of value:

(i) Any oral or written request.

(ii) The making of any announcement in the press, over the radio or television, by telephone, through the mail or any other media concerning an appeal or campaign by or for any charitable organization or purpose.

(iii) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain a contribution.

(iv) The offer of, attempt to sell, or sale of any advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies or other tangible item in connection with which any appeal is made for any charitable organization or purpose, or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale, or where any statement is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or will benefit any charitable organization.

(v) The use or employment of container, canisters, cards, receptacles or similar devices for the collection of money or other thing of value in connection with which any appeal is made for any charitable organization or purpose.

(vi) Any announcement requesting the public to attend an appeal, assemblage, athletic or competitive event, carnival, circus, concert, contest, dance, entertainment, exhibition, exposition, game, lecture, meal, party, show, social gathering or other performance or event of any kind.

A solicitation shall take place whether or not the person making the solicitation receives any contribution, except that a charitable organization's use of its own name in any communication shall not alone be sufficient to constitute a solicitation.

SOURCES: Laws, 1991, ch. 515, § 1; reenacted, 1992, ch. 446, § 1; Laws, 1997, ch. 444, § 1, eff from and after July 1, 1997.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Cross References — Assets of dissolved charitable organization, as defined in this section, to be transferred to another charitable organization, as defined in this section, see § 79-11-336.

Filing annual registration statement, see § 79-11-503.

Federal Aspects — Provisions of Section 170 of the Internal Revenue Code, see 26 USCS § 170.

Provisions of Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

RESEARCH REFERENCES

ALR. Criminal offenses under statutes and ordinances regulating charitable solicitations. 76 A.L.R.3d 924.

Right of member of nonprofit associa-

tion or corporation to possession, inspection, or use of membership list. 37 A.L.R.4th 1206.

Lack of consideration as barring en-

forcement of promise to make charitable contribution or subscription — modern cases. 86 A.L.R.4th 241.

Am Jur. 15 Am. Jur. 2d, Charities §§ 171 et seq.

3 Am. Jur. Proof of Facts 187, Charities. **CJS.** 14 C.J.S., Charities §§ 15 et seq.

§ 79-11-503. Registration statement; filing fee; forms; records; exceptions; final report upon expiration of registration of corporation opting not to renew registration; report contents.

(1) Except as otherwise provided in Section 79-11-505 and prior to any solicitation of contributions, every charitable organization as defined in Section 79-11-501 which solicits or intends to solicit contributions by any means whatsoever shall file a registration statement with, and pay a filing fee of Fifty Dollars (\$50.00) to, the Secretary of State. A registration statement that contains false, misleading, deceptive or incomplete information or documentation shall not be considered sufficient. The registration statement shall be on forms prescribed by the Secretary of State and shall contain the following information and such other information that the Secretary of State may require by rule:

(a) The name of the organization and the name or names under which it intends to solicit contributions;

(b) The names and addresses of the officers, directors, trustees and chief executive officer of the organization;

(c) The addresses of the organization and any offices in this state. If the organization does not maintain a principal office, the name and address of the person having custody of its financial records;

(d) Where and when the organization was legally established, the form of its organization and its tax exempt status;

(e) The purpose for which the organization and the purpose or purposes for which the contributions to be solicited will be used;

(f) The date on which the fiscal year of the organization ends;

(g) Whether the organization is authorized by any other governmental authority to solicit contributions and a statement of (i) whether the charitable organization or any of its present officers, directors, executive personnel or trustees have ever had a license or registration denied, suspended, revoked or enjoined by any court or other governmental authority in this state or any other state, or (ii) whether the charitable organization has voluntarily entered into an assurance or voluntary discontinuance or agreement with any jurisdiction or federal agency or officer;

(h) The names and addresses of any professional fund-raisers or fund-raising counsel who are acting or have agreed to act on behalf of the organization;

(i) Methods by which solicitation will be made;

(j) Copies of contracts between charitable organizations and professional fund-raisers or fund-raising counsel relating to financial compensa-

tion or profit to be derived by the professional fund-raisers or fund-raising counsel. If any such contract is executed after filing of a registration statement, a copy thereof shall be filed within ten (10) days of the date of execution;

(k) The board, group or individual having final authority over the distribution, custody and use of contributions received;

(l) A financial report as required by Section 79-11-507;

(m) With the initial registration only, a copy of the current charter, articles of incorporation, agreement of association, instrument of trust, constitution, or other organizational instrument and a copy of the bylaws of the charitable organization; and

(n) With the initial registration or, if after registration, within thirty (30) days after its receipt, a copy of any federal tax exemption determination letter, any correspondence rescinding the charitable organization's tax exempt status, or any notification from the Internal Revenue Service of any challenge to or investigation of the charitable organization's continued entitlement to federal tax exemption.

(2) The registration statement shall be signed and sworn to under penalties of perjury by the president or other authorized officer and the chief fiscal officer of the organization.

(3) The Secretary of State shall issue a certificate of registration to a charitable organization once the Secretary of State determines that such organization has complied with all provisions of this chapter. No charitable organization required to be registered under this section shall solicit funds without a valid certificate of registration.

(4) Such registration shall remain in effect for one (1) year, unless renewed by the filing of forms as prescribed by the Secretary of State and upon payment of the Fifty Dollars (\$50.00) renewal fee.

(5) Every registered organization shall notify the Secretary of State within thirty (30) days of any change in the information required to be furnished by such organization under Sections 79-11-501 through 79-11-529.

(6) In no event shall a registered charitable organization continue to solicit contributions in or from this state after the date such organization should have filed, but failed to file, a renewal and the financial report in accordance with the requirements of Sections 79-11-501 through 79-11-529.

(7) If any local, county or area division of a charitable organization is supervised and controlled by a superior or parent organization, incorporated, qualified to do business, or doing business within this state, such local, county or area division shall not be required to register under this section if the superior or parent organization files a registration statement on behalf of the local, county or area division in addition to or as part of its own registration statement. If a registration statement has been filed by a superior or parent organization as provided in Section 79-11-503(1), it shall file the annual report required under Section 79-11-507 on behalf of the local, county or area division in addition to or as part of its own report, but the accounting information required under Section 79-11-507 shall be set forth separately and not in

consolidated form with respect to every local, county or area division which raises or expends more than Twenty-five Thousand Dollars (\$25,000.00).

(8) Any registered charitable organization which for any reason opts not to renew its registration must, upon the expiration of its registration, provide to the Secretary of State a final report including the following, in addition to such other information the Secretary of State may require by rule:

(a) For domestic charitable organizations which have dissolved pursuant to the Mississippi Nonprofit Corporation Act;

(i) All financial statements and reports required by Section 79-11-507;

(ii) Articles of dissolution and certified minutes reflecting the dissolution;

(iii) A list of officers and trustees of the corporation, including their addresses and telephone numbers; and

(iv) A statement signed by an officer of the corporation providing details of the final distribution of assets.

(b) For all other charitable organizations, foreign or domestic, which opt not to renew for any other reason:

(i) All financial statements and reports required by Section 79-11-507; and

(ii) A statement signed by an officer of the charitable organization certifying that the organization has ceased charitable solicitations within the state.

SOURCES: Laws, 1991, ch. 515, § 2; reenacted and amended, 1992, ch. 446, § 2; Laws, 1997, ch. 444, § 2; Laws, 2009, ch. 547, § 5, eff from and after July 1, 2009.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Amendment Notes — The 2009 amendment substituted "Twenty-five Thousand Dollars (\$25,000.00)" for "Four Thousand Dollars (\$4,000.00)" at the end of (7); and added (8).

Cross References — Mississippi Administrative Procedures Law, see §§ 25-4-1.101 et seq.

Filing annual financial statements, see § 79-11-507.

Filing reports with Secretary of State, see § 79-11-507.

Reasons for denial, suspension, or revocation of registration or exemption applied for under this section, see § 79-11-509.

Mississippi Nonprofit Corporation Act, see §§ 79-11-101 et seq.

Organizations excepted from application of registration provisions of this section and reporting provisions of § 79-11-507, see § 79-11-505.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. 2d, Charities §§ 171 et seq.

3 Am. Jur. Proof of Facts 187, Charities.
CJS. 14 C.J.S., Charities §§ 15 et seq.

§ 79-11-504. Authority of Secretary of State to promulgate rules and regulations.

The Secretary of State shall have the authority to:

(a) Promulgate rules of procedure and regulations necessary for the administration of Sections 79-11-501 through 79-11-529, Mississippi Code of 1972, subject to the provisions of the Mississippi Administrative Procedures Law.

(b) Honor written requests from interested person for interpretative opinions regarding registration and exemptions from registration.

(c) Publish and disseminate information to the public concerning persons subject to Sections 79-11-501 through 79-11-529, Mississippi Code of 1972.

(d) Perform any other functions and duties which may be necessary to carry out the provisions of Sections 79-11-501 through 79-11-529, Mississippi Code of 1972.

SOURCES: Laws, 1997, ch. 444, § 3, eff from and after July 1, 1997.

Cross References — Mississippi Administrative Procedures Law, see §§ 25-4-1.101 et seq.

RESEARCH REFERENCES

Am Jur. 15 Am. Jur. 2d, Charities
§ 171 et seq.

§ 79-11-505. Exemption from provisions; notice of exemption; burden of proof.

(1) The registration provisions of Sections 79-11-503 and the reporting provisions of Section 79-11-507 shall not apply to the following organizations:

(a) All educational institutions that are recognized by the State Board of Education or that are accredited by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution which makes the solicitation of contributions solely by its student body, alumni, faculty and trustees and their families or a library established under the laws of this state.

(b) Fraternal, patriotic, social, educational, alumni organizations and historical societies when solicitation of contributions is made solely by their membership; however, posts of the American Legion and posts of the Veterans of Foreign Wars of the United States may utilize nonmembers to assist designated supervisors in the conduct of bingo under the Charitable Bingo Law and qualify for this exemption. This exemption shall be extended to any subsidiary of a parent or superior organization if such solicitation is

made solely by the membership of the subsidiary, parent or superior organization.

(c) Persons requesting any contributions for the relief or benefit of any individual, specified by name at the time of the solicitation, if the contributions collected are turned over to the named beneficiary, first deducting reasonable expenses for costs of banquets or social gatherings, if any, provided all fund-raising functions are carried on by persons who are unpaid, directly or indirectly, for such services.

(d) Any charitable organization which does not intend to solicit and receive and does not actually receive contributions in excess of Twenty-five Thousand Dollars (\$25,000.00) during any twelve-month period ending June 30 of any year or on such other date as prescribed by rule, provided all of its fund-raising functions are carried on by persons who are unpaid for such services. However, if the gross contributions received by such charitable organization during any twelve-month period ending June 30 of any year or other date as prescribed by rule shall be in excess of Twenty-five Thousand Dollars (\$25,000.00) it shall, within thirty (30) days after the date it shall have received total contributions in excess of Twenty-five Thousand Dollars (\$25,000.00), register with and report to the Secretary of State as required by this chapter.

(e) Any charitable organization receiving an allocation from an incorporated community chest or united fund, provided such chest or fund is complying with the provisions of Sections 79-11-501 through 79-11-529 relating to registration and filing of annual reports with the Secretary of State, and provided such organization does not actually receive, in addition to such allocation, contributions in excess of Twenty-five Thousand Dollars (\$25,000.00) during any twelve-month period ending June 30 of any year or such other date as prescribed by rule, and provided further, that all the fund-raising functions of such organization are carried on by persons who are unpaid for such services. However, if the gross contributions other than such allocation received by such charitable organization during any twelve-month period ending June 30 of any year or on such other date as prescribed by rule shall be in excess of Twenty-five Thousand Dollars (\$25,000.00), it shall, within thirty (30) days after the date it shall have received such contributions in excess of Twenty-five Thousand Dollars (\$25,000.00), register with and report to the Secretary of State as required by this chapter.

(f) All volunteer fire departments or rescue units, rural or otherwise, chartered under the laws and statutes of the State of Mississippi as nonprofit corporations.

(g) Any humane society organized under the laws of Mississippi which contracts with counties or municipalities for the care and keeping of estrays.

(h) Any other organization which the Secretary of State by rule or order exempts from the registration requirements of this chapter upon finding that (i) such registration is neither necessary in the public interest nor for the protection of contributors, or (ii) such exemption shall further the objectives of compatibility with uniformity among the states.

(2) Prior to any solicitations for contributions, each charitable organization claiming to be exempt shall file a Notice of Exemption on the forms prescribed by the Secretary of State. In any proceeding under this chapter, the burden of proving an exemption, or an exception from a definition, is upon the person claiming it.

SOURCES: Laws, 1991, ch. 515, § 3; reenacted and amended, 1992, ch. 446, § 3; Laws, 1994, ch. 393, § 1; Laws, 1997, ch. 444, § 4; Laws, 2007, ch. 360, § 1; Laws, 2009, ch. 547, § 6, eff from and after July 1, 2009.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Amendment Notes — The 2007 amendment added the language following “by their membership” in the first sentence of (1)(b); and made a minor stylistic change in (2).

The 2009 amendment rewrote the introductory paragraph of (1); substituted “Twenty-five Thousand Dollars (\$25,000.00)” for “Four Thousand Dollars (\$4,000.00)” throughout (1)(d) and (e); and inserted “or on such other date as prescribed by rule” following “June 30 of any year” throughout (1)(d) and (e).

Cross References — Requirement that charitable organization soliciting contributions file registration statement, see § 79-11-503.

Reasons for denial, suspension, or revocation of registration or exemption applied for under this section, see § 79-11-509.

Powers and duties of Secretary of State and the Attorney General with respect to charitable organizations, see § 79-11-519.

Powers and duties of district attorneys and county prosecuting attorneys relating to charitable solicitations, see § 79-11-519.

Charitable Bingo Law generally, see §§ 97-33-51 et seq.

Federal Aspects — Section 501(c)(3) of United States Internal Revenue Code, see 26 USCS § 501(c)(3).

§ 79-11-507. Reports to Secretary of State; financial statements; extension of due date for filing financial statements; administrative penalties.

(1) Every charitable organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions in excess of Five Hundred Thousand Dollars (\$500,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for such services, and every charitable organization registered pursuant to Section 79-11-503 whose fund-raising functions are not carried on solely by persons who are unpaid for such services shall file a financial statement for its most recently completed fiscal year with the Secretary of State. The financial statement shall be filed along with the registration statement required by Section 79-11-503 and any renewals or final report thereafter. The financial statement shall include a balance sheet and statement of income and expense and shall be consistent with forms furnished by the Secretary of State clearly setting forth the following: gross receipts and gross income from all sources, broken down into total receipts and income from each separate solicitation project or source; cost of administration; cost of solicitation; cost of programs designed to inform or educate the public; total net amount disbursed or dedicated for each major purpose, charitable or other-

wise. The statement shall be signed by the president or other authorized officer and the chief fiscal officer of the organization, and shall be accompanied by an opinion signed by an independent certified public accountant that the financial statement therein fairly represents the financial operations of the organization in sufficient detail to permit public evaluation of its operations. The financial statement shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.

(2) Every organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) but not more than Five Hundred Thousand Dollars (\$500,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for their services shall file a financial statement reviewed by an independent certified public accountant along with the registration statement required by Section 79-11-503 and any renewals or final report thereafter with the Secretary of State upon forms prescribed by him. The reviewed financial statement shall cover the most recently completed fiscal year and include such information as required by the Secretary of State by rule or otherwise, including, but not limited to, the gross receipts from contributions and the use of the proceeds of such contributions. The statement shall be signed by the president or other authorized officer of the organization who shall certify under penalties of perjury that the statements therein are true and correct to the best of the signer's knowledge. The reviewed financial statement shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.

(3) Every organization registered pursuant to Section 79-11-503 that shall receive in any fiscal year contributions not in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) and all of whose fund-raising functions are carried on by persons who are unpaid for their services shall file a financial report along with the registration statement required by Section 79-11-503 and any renewals or final report thereafter with the Secretary of State upon forms prescribed by him. Such financial report shall cover the most recently completed fiscal year and include such information as required by the Secretary of State by rule or otherwise, including, but not limited to, the gross receipts from contributions and the use of the proceeds of such contributions. The report shall be signed by the president or other authorized officer of the organization who shall certify under penalties of perjury that the statements therein are true and correct to the best of the signer's knowledge. Such financial report shall be accompanied by any and all forms required to be filed by a charitable organization with the United States Internal Revenue Service.

(4) Any charitable organization receiving more than Twenty-five Thousand Dollars (\$25,000.00) but less than Five Hundred Thousand Dollars (\$500,000.00) shall, at the request of the Secretary of State, submit additional financial information, including, but not limited to, an audited financial statement prepared in accordance with generally accepted accounting principles and accompanied by an opinion signed by an independent certified public accountant that the financial statement therein fairly represents the

financial operations of the organization in sufficient detail to permit public evaluation of its operations.

(5) The Secretary of State pursuant to Section 79-11-509 may promulgate rules to provide for extensions of the due date for filing of the financial statements required by this chapter and may impose an administrative penalty against any organization which fails to comply with this section within the time prescribed, or fails to furnish such additional information as is requested by the Secretary of State within the required time.

SOURCES: Laws, 1991, ch. 515, § 4; reenacted and amended, 1992, ch. 446, § 4; Laws, 1997, ch. 444, § 5; Laws, 2008, ch. 559, § 1; Laws, 2009, ch. 547, § 7, eff from and after July 1, 2009.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Amendment Notes — The 2008 amendment rewrote the section to increase the amount in contributions charitable organizations may receive in a fiscal year before having to file a financial statement and opinion signed by independent certified CPA and to revise the threshold amounts that trigger the requirements to file.

The 2009 amendment added “or final report” following “required by Section 79-11-503 and any renewals” in the second sentence of (1) and in the first sentences of (2) and (3); and rewrote (5).

Cross References — Filing annual registration statement, see § 79-11-503.

Annual registration statement, see § 79-11-503.

Organizations excepted from application of registration provisions of § 79-11-503 and reporting provisions of this section, see § 79-11-505.

§ 79-11-509. Effective date of registration; denial, suspension or revocation of registration or exemption; grounds for denial, suspension or revocation; procedure; violations and penalties.

(1) The Secretary of State shall deny, suspend or revoke a registration or an exemption for the following reasons:

(a) The application for registration or renewal is incomplete.

(b) The application or renewal fee (where applicable) has not been paid.

(c) A document filed with the Secretary of State contains one or more false or misleading statements or omits material facts.

(d) The charitable contributions have not been or are not being applied for the purpose or purposes stated in the documents filed with the Secretary of State.

(e) The applicant or registrant has violated or failed to comply with any provisions of this chapter or any rule or order thereunder.

(f) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent or employee thereof who has been convicted of a felony or a misdemeanor involving misrepresentation, misapplication or misuse of the money or property of another maintains a position where he or she has access to or control over the funds of the charitable organization.

(g) The applicant or registrant has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

(h) The applicant or registrant has had the authority to engage in charitable or fund-raising activities denied, revoked or suspended by the Secretary of State or any other state or jurisdiction.

(i) The applicant or registrant has been convicted of any criminal offense committed in connection with the performance of activities regulated under Sections 79-11-501 through 79-11-529 or any criminal offense involving untruthfulness or dishonesty or any criminal offense relating adversely to the registrant's or applicant's fitness to perform activities regulated by Sections 79-11-501 through 79-11-529. For the purposes of this paragraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction.

(j) Any applicant, registrant, officer, director, or partner of the applicant or registrant, or any agent, volunteer or employee thereof, who has been convicted under federal or state law of any criminal offense involving acts against children maintains a position where he or she is in close contact with children.

(k) Any officer, director, partner, employee, agent or volunteer has accrued three (3) or more unremediated citations issued by the Secretary of State pursuant to this section.

(l) The applicant or registrant has engaged in other forms of misconduct as may be determined by the rules adopted by the Secretary of State.

(2) The Secretary of State shall notify the applicant or licensee of his intent to deny, suspend or revoke a license. The notification shall contain the reasons for the action and shall inform him of his right to request an administrative hearing within thirty (30) days of receipt of the notification. The denial, suspension or revocation shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is requested and the denial, suspension or revocation is upheld, the denial, suspension or revocation shall become effective upon the service of the final administrative decision on the applicant or licensee.

(3) Registration shall become effective no later than noon of the thirtieth day after a completed application is filed, if no denial order is in effect and no proceeding is pending under this chapter. The Secretary of State may, by rule or order, specify an earlier effective date, and the Secretary of State may, by order, defer the effective date until noon of the thirtieth day after the filing of any amendment.

(4) Whenever it appears to the Secretary of State that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may, in his discretion, seek one or more of the following remedies in addition to other remedies authorized by law:

(a) Issue a cease and desist order, with or without a prior hearing against the person or persons engaged in the prohibited activities, directing them to cease and desist from further illegal activity;

(b) Administratively dissolve or seek the judicial dissolution of a domestic corporation that is a charitable organization, or revoke the certificate of authority of a foreign corporation that is a charitable organization; or

(c) Issue an order imposing an administrative penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, each violation to be considered as a separate offense in a single proceeding or a series of related proceedings;

(d) For the purpose of determining the amount or extent of a sanction, if any, to be imposed under paragraph (b) or (c) of this subsection, the Secretary of State shall consider, among other factors, the frequency, persistence and willfulness of the conduct constituting a violation of this chapter or a rule promulgated thereunder or an order of the Secretary of State, the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

(5) In addition to the above remedies, the Secretary of State may issue a citation to any person engaging in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder. The Secretary of State shall establish rules providing remediation of certain citations, and the decision whether to allow such remediation will be within the Secretary of State's discretion.

(6) Whenever it appears to the Secretary of State or Attorney General that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder, either official may, in his discretion, take any or all of the following actions: bring an action in chancery court to obtain a temporary restraining order or injunction to enjoin the acts or practices and enforce compliance with Sections 79-11-501 through 79-11-529 or any rule or order thereunder; collect administrative penalties imposed under this section; or obtain on behalf of a charitable organization the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Section 79-11-519(3)(j). Upon a proper showing a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition, upon a proper showing, the court may enter an order of rescission, restitution or disgorgement directed to any person who has engaged in any act constituting a violation of any provision of Sections 79-11-501 through 79-11-529 or any rule or order thereunder. In addition the court may impose a civil penalty up to a maximum of Twenty-five Thousand Dollars (\$25,000.00) for each offense, and each violation shall be considered as a separate offense in a single proceeding or a series of related proceedings. The court may not require the Secretary of State or Attorney General to post a bond.

SOURCES: Laws, 1991, ch. 515, § 5; reenacted and amended, 1992, ch. 446, § 5; Laws, 1997, ch. 444, § 6; Laws, 2009, ch. 547, § 8, eff from and after July 1, 2009.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

The reference in (4)(d) to “paragraph (b) or (c) of this section” has been changed to “paragraph (b) or (c) of this subsection” at the direction of the co-counsel of the Joint Committee on Compilation, Revision and Publication of Legislation.

Amendment Notes — The 2009 amendment rewrote the section.

Cross References — Imposition, by Secretary of State, of administrative penalty under this section for failure to file required statements, see § 79-11-507.

§ 79-11-511. Out-of-state organization; service of process.

Any charitable organization, person, professional fund-raiser, fund-raising counsel or professional solicitor, which or who solicits contributions in this state, but does not maintain an office within the state, shall be subject to service of process by designating a registered agent upon which process may be served in the State of Mississippi, or if no designation has been made, then service of process shall be upon the Secretary of State of Mississippi.

SOURCES: Laws, 1991, ch. 515, § 6; reenacted, 1992, ch. 446, § 6; Laws, 1997, ch. 444, § 7, eff from and after July 1, 1997.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

§ 79-11-513. Registration as professional fund-raiser or fund-raising counsel; bond; filing annual report.

No person shall act as a professional fund-raiser or fund-raising counsel for a charitable organization before he has registered with the Secretary of State or after the expiration or cancellation of such registration or any renewal thereof. Applications for registration and renewals shall be in writing sworn to under penalties of perjury in the form prescribed by the Secretary of State and accompanied by the filing of a fee of Two Hundred Fifty Dollars (\$250.00). The professional fund-raiser applicant, at the time of making application, shall file with the State Treasurer and have approved by the Secretary of State a bond in which the applicant shall be the principal obligor in the sum of Ten Thousand Dollars (\$10,000.00) with one or more corporate sureties licensed to do business in this state whose liability in the aggregate will at least equal such sum. The bond shall run to the Secretary of State for the use of the state and to any person who may have a cause of action against the obligor of the bond for any malfeasance or misfeasance in the conduct of such solicitation; provided, that the aggregate limit of liability of the surety to the state and to all such persons shall, in no event, exceed the sum of such bond. Such limitation of liability, as to the sum of the bond, as to the surety, shall not

otherwise affect any liability to any person by any charitable organization, professional fund-raiser, professional solicitor or any other person for a violation of this chapter. Registration when effected shall be for a period of one (1) year, or a part thereof, expiring on June 30 or on such other date as prescribed by rule and may be renewed upon written application, under oath, in the form prescribed by the Secretary of State and upon the remittance of the renewal fee of Two Hundred Fifty Dollars (\$250.00) and the filing of the bond for additional one-year periods. Every professional fund-raiser and fund-raising counsel required to register pursuant to Sections 79-11-501 through 79-11-529 shall file an annual written report with the Secretary of State containing such information and documentation as he may require by rule.

SOURCES: Laws, 1991, ch. 515, § 7; reenacted and amended, 1992, ch. 446, § 7; Laws, 1997, ch. 444, § 8; Laws, 2009, ch. 547, § 9, eff from and after July 1, 2009.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Amendment Notes — The 2009 amendment rewrote the next-to-last sentence of the section.

Cross References — Reasons for denial, suspension or revocation of registration or exemption applied for under this section, see § 79-11-509.

Registration as professional solicitor in employ of professional fund-raiser, see § 79-11-517.

§ 79-11-515. Contracts; filing with Secretary of State.

(1) All contracts entered into between professional fund-raisers or fund-raising counsel and charitable organizations shall be in writing and a true and correct copy of such* contract shall be filed by the professional fund-raiser or fund-raising counsel who is a party thereto with the Secretary of State at least ten (10) days prior to the performance by the professional fund-raiser or fund-raising counsel of any service. The contract must be signed by two (2) authorized officials of the charitable organization, one (1) of whom must be a member of the organization's governing body, and the authorized contracting officer for the professional fund-raiser or fund-raising counsel. True and correct copies of such contracts shall be kept on file in the offices of the charitable organization and the professional fund-raiser or fund-raising counsel during the term thereof and until the expiration of a period of three (3) years subsequent to the date the solicitation of contributions provided for therein actually terminates. The contract shall contain all of the following provisions:

(a) The legal name and address of the charitable organization as registered with the Secretary of State, unless that charitable organization is exempt from registration;

(b) A statement of the charitable purpose for which the solicitation campaign is being conducted;

(c) A statement of the respective obligations of the professional fund-raiser or fund-raising counsel and the charitable organization;

(d) A clear statement of the fees or rate which will be paid to the professional fund-raiser or fund-raising counsel;

(e) The effective and termination dates of the contract and the date services will commence with respect to the solicitation in this state of contributions for a charitable organization;

(f) For fund-raising counsel, a statement that the fund-raising counsel will not at any time have custody or control of contributions;

(g) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and

(h) Any other information required by the rules of the Secretary of State.

(2) Prior to the commencement of any solicitation, the professional fund-raiser shall file all of the following with the Secretary of State and such other information that the Secretary of State may, by rule, require a written report on forms prescribed by the Secretary of State containing information about the solicitation campaign, including, but not limited to, the following:

(a) The fund-raising methods to be used;

(b) The projected dates when the solicitation campaign will commence and terminate;

(c) The location and telephone number from where the solicitation campaign will be conducted if it will be conducted by telephone;

(d) The name and residence address of each person responsible for directing and supervising the conduct of the solicitation campaign;

(e) A statement of whether the professional fund-raiser will at any time have custody of any contributions;

(f) The account number and location of each bank account where receipts from the campaign are to be deposited;

(g) A full and fair description of the charitable program for which the solicitation campaign is being carried out; and

(h) The written and signed consent of every charitable organization on whose behalf the professional fund-raiser will be soliciting contributions or whose name will be mentioned during the solicitation.

(3) Not later than ninety (90) days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, the professional fund-raiser shall furnish an accounting of all contributions collected and expenses paid to the charitable organization with which the professional fund-raiser has contracted. The accounting shall be in writing and shall be retained by the professional fund-raiser and charitable organization for three (3) years. The professional fund-raiser shall file a final report of the accounting with the Secretary of State on forms prescribed by him and containing such information he may, by rule, require not later than seven (7) days after it is furnished to the charitable organization. This report shall be signed by the contracting agent with the professional fund-raiser and also by an authorized officer of the charitable organization.

(4) Not later than two (2) days after receipt of each contribution, the professional fund-raiser shall deposit the entire amount of the contribution in

an account at a bank or other federally insured financial institution which shall be in the name of the charitable organization with which the professional fund-raiser has contracted. Each contribution collected by the professional fund-raiser shall be solely in the name of that charitable organization. The charitable organization shall have sole control of all withdrawals from the account and the professional fund-raiser shall not be given the authority to withdraw any deposited funds from the account.

(5) During each solicitation campaign and for not less than three (3) years after its completion, the professional fund-raiser shall maintain the following records that shall be made available to the Attorney General or the Secretary of State upon request:

(a) A record of each contribution that at any time is in the custody of the professional fund-raiser, including the name and address of each contributor and the date and amount of the contribution; and

(b) The location of each bank or financial institution in which the professional fund-raiser has deposited revenue from the solicitation campaign and the account number of each account into which the deposits were made.

(6) Any material change in any information filed with the Secretary of State pursuant to this section shall be reported in writing by the professional fund-raiser or fund-raising counsel to the Secretary of State not more than seven (7) days after such change occurs.

SOURCES: Laws, 1991, ch. 515, § 8; reenacted and amended, 1992, ch. 446, § 8; Laws, 1997, ch. 444, § 9, eff from and after July 1, 1997.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

§ 79-11-517. Registration as professional solicitor in employ of professional fund-raiser.

No person shall act as a professional solicitor in the employ of a professional fund-raiser required to register pursuant to Section 79-11-513 before he has registered with the Secretary of State or after the expiration or cancellation of such registration or any renewal thereof. Application for registration or renewal shall be in writing sworn to under penalties of perjury in the form prescribed by the Secretary of State. Such registration when effected shall be for a period of one (1) year, or a part thereof, expiring on June 30 or such other date as prescribed by rule, and may be renewed upon written application, sworn to under penalties of perjury, in the form prescribed by the Secretary of State for additional one-year periods.

SOURCES: Laws, 1991, ch. 515, § 9; reenacted, 1992, ch. 446, § 9; Laws, 1997, ch. 444, § 10; Laws, 2009, ch. 547, § 10, eff from and after July 1, 2009.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Amendment Notes — The 2009 amendment rewrote the last sentence.

Cross References — Reasons for denial, suspension or revocation of registration or exemption applied for under this section, see § 79-11-509.

§ 79-11-518. Records of solicitation activities.

Every charitable organization, professional fund-raiser, professional solicitor, or fund-raising counsel, whether or not required to register pursuant to Sections 79-11-501 through 79-11-529, Mississippi Code of 1972, shall keep true and correct books and records of solicitation activities that are covered by Sections 79-11-501 through 79-11-529, Mississippi Code of 1972, or any rule or order adopted under Sections 79-11-501 through 79-11-529, Mississippi Code of 1972. All such books and records shall be open to inspection at all reasonable times by the Secretary of State or the Attorney General, or their duly authorized representatives. The records shall be retained for a period of at least three (3) years.

SOURCES: Laws, 1997, ch. 444, § 11, eff from and after July 1, 1997.

RESEARCH REFERENCES

Am Jur. 15 *Am. Jur.* 2d, *Charities*
§ 171 et seq.

§ 79-11-519. Powers and duties of district attorneys and county prosecuting attorneys; violations of Sections 79-11-501 through 79-11-529.

(1) It is the duty of the district attorneys and county prosecuting attorneys of this state to prosecute all violations of the provisions of Sections 79-11-501 through 79-11-529. In addition, actions for violations of Sections 79-11-501 through 79-11-529 may be prosecuted by the Attorney General.

(2) Sections 79-11-501 through 79-11-529 shall not be construed to limit or restrict the exercise of the powers or the performance of the duties of the Attorney General which he otherwise is authorized to exercise or perform under any other provision of law by statute or otherwise except the rendering of interpretative opinions in accordance with Section 79-11-503 which shall be limited to the Secretary of State.

(3) It shall be a violation of Sections 79-11-501 through 79-11-529 for any person:

(a) To misrepresent:

- (i) The purpose or beneficiary of a solicitation;
- (ii) The purpose or nature of a charitable organization; or
- (iii) That any other person sponsors or endorses a solicitation.

(b) To use or exploit the fact of registration so as to lead the public to believe that such registration constitutes an endorsement or approval by the state;

(c) To use the name of a charitable organization, or to display any emblem, device or printed matter belonging to or associated with a charitable organization without the express written permission of the charitable organization;

(d) To make any false or misleading statement on any document required by Sections 79-11-501 through 79-11-529 or any rule or order thereunder;

(e) To fail to comply with the requirements of Sections 79-11-501 through 79-11-529 or any rule or order thereunder;

(f) To commit any unfair or deceptive act or practice; to employ any device, scheme or artifice to defraud; to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or to obtain money or property by means of any false pretense, representation or promise;

(g) To fail to provide complete and timely payment to a charitable organization of the proceeds from a solicitation campaign or a charitable sales promotion;

(h) To make any false or misleading statements in the solicitations of contributions in this state or to omit to state any fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(i) To refuse or fail, after notice, to produce any records required to be kept under Sections 79-11-501 through 79-11-529, or any rule or order promulgated thereunder;

(j) To benefit, directly or indirectly, from any transaction in which an economic benefit is provided by a charitable organization where the value of the benefit provided by the organization exceeds the fair market value of the consideration received by the organization.

(4) It shall be a violation of Sections 79-11-501 through 79-11-529 for any charitable organization:

(a) To engage in any financial transaction which is not related to the accomplishment of a charitable purpose, or which jeopardizes or interferes with the ability of the charitable organization to accomplish a charitable purpose;

(b) To expend an unreasonable amount of money for solicitation or management;

(c) To use the name which is the same as or confusingly similar to the name of another charitable organization unless the latter organization shall consent in writing to its use;

(d) To represent itself as being associated with another charitable organization without the express written acknowledgment and endorsement of such other charitable organization;

(e) To use the services of an unregistered professional fund-raiser or fund-raising counsel or professional solicitor;

(f) To fail to comply with any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder;

(g) To employ as an officer, director, partner, employee, agent or volunteer, any person who has accrued three (3) or more unremediated citations issued by the Secretary of State pursuant to Section 79-11-509;

(h) To employ as an officer, director, partner, employee or agent any person who has been convicted of a felony or misdemeanor involving misrepresentation, misapplication or misuse of the money or property of another, in a capacity where that person has access to or control over the funds of the charitable organization;

(i) To employ as an officer, director, partner, employee, volunteer or agent any person who has been convicted under federal or state law of any criminal offense involving acts against children, where such position will bring the person into close contact with children; or

(j) To apply the charitable organization's funds or assets for private inurement or excess benefits which exceed the fair market value of the property or services received in return from directors, officers, or those persons who are deemed disqualified persons or insiders under applicable federal law for tax-exempt organizations.

(5) It shall be a violation of Sections 79-11-501 through 79-11-529 for any professional fund-raiser, professional fund-raising counsel or any professional solicitor:

(a) To perform any services on behalf of an unregistered charitable organization; or

(b) To fail to comply with any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.

(6) It shall be a violation of Sections 79-11-501 through 79-11-529 for any person, in connection with a public safety organization solicitation:

(a) To use any representation that implies that the contribution is for or on behalf of a public safety agency or a public safety organization, or using any emblem, device, or printed matter belonging to or associated with a public safety agency or organization, unless authorized in writing to do so by the agency or organization;

(b) To use a name, symbol, or statement that is similar to that used by a public safety agency or organization in a manner that is intended to confuse or mislead a person being solicited;

(c) To represent or imply that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not;

(d) To solicit for a public safety organization, independent promoter, public safety publication, or cause by representing that those who respond affirmatively to the solicitation will receive favored treatment by public safety personnel; or

(e) To fail to comply with any provisions of Sections 79-11-501 through 79-11-529 or any rule or order thereunder.

(7) A misrepresentation may be accomplished by words or conduct or failure to disclose a material fact. Regardless of a person's intent or the lack of

injury, the above acts and practices are prohibited in the planning, conduct or execution of any solicitation or charitable sales promotion.

(8) The Secretary of State or the Attorney General may exercise the authority granted in this section against any charitable organization or person which or who operates under the guise or pretense of being an organization exempted by the provisions of Section 79-11-505, and is not in fact an organization entitled to such an exemption.

SOURCES: Laws, 1991, ch. 515, § 10; reenacted and amended, 1992, ch. 446, § 10; Laws, 1997, ch. 444, § 12; Laws, 2009, ch. 547, § 11, eff from and after July 1, 2009.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, text in subsection (6) was changed as follows: in paragraph (b), "To use a name" was substituted for "Using a name"; in paragraph (c), "To represent or imply" was substituted for "Representing or implying"; and in paragraph (d), "To solicit" was substituted for "Soliciting."

Amendment Notes — The 2009 amendment rewrote the section.

Cross References — Fines and penalties for violations of §§ 79-11-501 through 79-11-527, see § 79-11-529.

§ 79-11-521. Investigations of violations; written statements as to facts and circumstances; publication of information concerning violations; authority to administer oaths, subpoena witnesses, take evidence, require production of books, papers, etc.

Either the Secretary of State or Attorney General, in his discretion: (a) may make such public or private investigations within or outside of this state as deemed necessary by the Secretary of State or Attorney General to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of Sections 79-11-501 through 79-11-529 or in the prescribing of rules and forms hereunder; (b) may require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated; and (c) may publish information concerning any violation of Sections 79-11-501 through 79-11-529 or any rule or order hereunder.

For the purpose of any investigation or proceeding under Sections 79-11-501 through 79-11-529, the Secretary of State or Attorney General, or any designated officer may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Secretary of State or Attorney General deems relevant or material to the inquiry.

SOURCES: Laws, 1991, ch. 515, § 11; reenacted and amended, 1992, ch. 446, § 11; Laws, 1997, ch. 444, § 13; Laws, 2009, ch. 547, § 12, eff from and after July 1, 2009.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Amendment Notes — The 2009 amendment rewrote the section.

§ 79-11-523. Use of names, symbol or statement during solicitations for contributions; disclosure requirements for professional fund raisers.

(1)(a) Prior to orally requesting a contribution or contemporaneously with written requests for a contribution, a professional fund-raiser and professional solicitor shall be responsible for clearly and conspicuously disclosing:

(i) The name of the professional fund-raiser as on file with the Secretary of State and that the solicitation is being conducted by a professional fund-raiser who is being paid for his services;

(ii) If the professional solicitor acting on behalf of the professional fund-raiser identifies himself by name, the professional solicitor's legal name; and

(iii) The name of the charitable organization as on file with the Secretary of State and a description of how the contributions raised by the solicitation will be utilized for a charitable purpose or, if no charitable organization exists, a description as to how the contributions raised by the solicitation will be utilized for a charitable purpose.

(b) All responses given by a professional fund-raiser and professional solicitor to an oral or written request for information shall be truthful.

(c) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, any written confirmation, receipt or reminder sent to any person who has contributed or has pledged to contribute shall include a clear and conspicuous disclosure of the information required under paragraph (1)(a) of this section.

(2) If requested by the person being solicited, the professional fund-raiser and professional solicitor shall inform that person orally and then in writing within fourteen (14) days of the request of the fixed percentage of the gross revenue or the reasonable estimate of the percentage of the gross revenue that the charitable organization or sponsor will receive as benefit from the solicitation campaign.

(3) In addition to the information required by subsection (1), any written confirmation, receipt and reminder of a contribution made pursuant to an oral solicitation and any written solicitation shall conspicuously state verbatim:

The official registration and financial information of (insert the legal name of the charity as registered with the Secretary of State) may be obtained from the Mississippi Secretary of State's office by calling 1-888-236-6167. Registration by the Secretary of State does not imply endorsement by the Secretary of State.

(4) Prior to orally requesting or contemporaneously with written requests for advertising to appear in a for-profit publication which relates to, purports to relate to or which could reasonably be construed to relate to any charitable purpose, the professional fund-raiser or fund-raising counsel shall be responsible for clearly and conspicuously disclosing:

(a) That the publication is a for-profit, commercial enterprise;

(b) The true name of the solicitor and the fact that the solicitor is being paid for his services; and

(c) The publication is not directly affiliated or sponsored by any charitable organization.

(5) Every container, as defined in Section 79-11-501, shall have a printed or typed notice affixed to the container, in a conspicuous place and accessible to the public, that is easily readable and legible that informs the public of the following:

(a) The approximate annual percentage paid, if any, to any person to maintain, service or collect the contributions raised by the solicitation;

(b) The net percentage or sum annually paid for the most recent calendar year paid to the specific charitable purpose; and

(c) If the maintenance, service and collection from the container is done by volunteers or by paid individuals.

The disclosure as required in this provision shall not apply to persons requesting any contributions for the relief or benefit of any individual, specified by name at the time of the solicitation, if all of the contributions collected are turned over to the named beneficiary, and provided all fund-raising functions are carried on by persons who are unpaid, directly or indirectly, for such services.

SOURCES: Laws, 1991, ch. 515, § 12; reenacted, 1992, ch. 446, § 12; Laws, 1997, ch. 444, § 14, eff from and after July 1, 1997.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

RESEARCH REFERENCES

ALR. Right of member of nonprofit association or corporation to possession, inspection, or use of membership list. 37 A.L.R.4th 1206.

§ 79-11-524. Restrictions on hours of telephone solicitation.

Any fund-raising counsel, professional fund-raiser, professional solicitor or employee of any of these who makes a telephone solicitation subject to the provisions of this chapter to a residential telephone number shall make calls only between the hours of 9:00 a.m. and 9:00 p.m., Monday through Saturday. No calls shall be made on Sundays.

SOURCES: Laws, 1997, ch. 444, § 18, eff from and after July 1, 1997.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statute or law pertaining to telephone solicitation. 44 A.L.R.5th 619.

Am Jur. 15 Am. Jur. 2d, Charities § 171 et seq.

§ 79-11-525. Fiduciary responsibility of person soliciting, collecting, or expending contributions.

Every person who solicits, collects or expends contributions on behalf of a charitable organization or for a charitable purpose, or who conducts a charitable sales promotion, and every officer, director, trustee or employee of that person who is concerned with the solicitation, collection or expenditure of those contributions shall be considered a fiduciary and as acting in a fiduciary capacity. This section does not supersede or otherwise alter the standard of care or the limitations on the liability of volunteers.

SOURCES: Laws, 1991, ch. 515, § 13; reenacted and amended, 1992, ch. 446, § 13; Laws, 1997, ch. 444, § 15, eff from and after July 1, 1997.

Editor's Note — Laws, 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws, 1992, ch. 446, § 16, amended Laws, 1991, ch. 515, § 16, deleting the repeal provision.

§ 79-11-526. Sponsors and advertisers of events liable only when having control or supervision of events.

(1) For purposes of this section, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Sponsor" or "advertiser" means any person, corporation or legal entity who, for charitable purposes or for the promotion of the health, peace and welfare of the community, donates or contributes products, material, money or pays fees for advertising or displaying trademarks in order that an event may be held or conducted.

(b) "Event" means a concert, benefit, fundraiser, auction or other occasion at which entertainment, food or beverages are provided.

(2) A sponsor or advertiser of an event shall not be held vicariously liable for the negligence of another in connection with or as a consequence of his involvement as a sponsor or advertiser of an event if he does not exercise any control or supervision over any aspect of the event.

(3) This section shall not confer immunity on a sponsor or advertiser of an event for willful acts or gross negligence, and a sponsor or advertiser of an event shall not be considered to be a part of a joint venture or the principal of an agent, with regard to any other person, corporation or legal entity which is participating in the event in a capacity other than that of a sponsor or advertiser.

SOURCES: Laws, 2003, ch. 448, § 1, eff from and after passage (approved Mar. 18, 2003.)

§ 79-11-527. Reciprocal agreements with other states; public access to registration records.

The Secretary of State may enter into reciprocal agreements with a like authority of any other state or states for the purpose of exchanging information made available to the Secretary of State or to such other like authority.

The information contained in or filed with any registration application, renewal or report may be made available to the public under such rules as the Secretary of State prescribes. Information in the possession of, filed with or obtained by the Secretary of State in connection with any investigation or examination under Sections 79-11-501 through 79-11-529 shall be confidential and exempt from the requirements of the Mississippi Public Records Act of 1983. No such information may be disclosed by the Secretary of State or any of his officers or employees unless necessary or appropriate in connection with a particular investigation or proceeding under Sections 79-11-501 through 79-11-529 or for any law enforcement purpose.

SOURCES: Laws, 1991, ch. 515, § 14; reenacted, 1992, ch. 446, § 14; Laws, 1997, ch. 444, § 16, eff from and after July 1, 1997.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Cross References — Mississippi Public Records Act, see §§ 25-61-1 et seq.

§ 79-11-529. Fines and penalties.

Any person who knowingly and willingly violates the provisions of Sections 79-11-501 through 79-11-527 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding Two Thousand Dollars (\$2,000.00) or by imprisonment in the county jail for not more than one (1) year or both. In connection with any solicitation, any person employing a device, scheme or artifice to defraud; or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, or obtaining money or property by means of any false pretense, representation or promise shall be guilty of a felony and, upon conviction, shall be punished by a fine not exceeding Twenty-five Thousand Dollars (\$25,000.00) or imprisoned not more than five (5) years, or both. No indictment or information may be returned under Sections 79-11-501 through 79-11-529 more than five (5) years after the alleged violation.

SOURCES: Laws, 1991, ch. 515, § 15; reenacted, 1992, ch. 446, § 15; Laws, 1997, ch. 444, § 17, eff from and after July 1, 1997.

Editor's Note — Laws of 1991, ch. 515, § 16, provided for the repeal of this section effective July 1, 1992. Subsequently, Laws of 1992, ch. 446, § 16, amended Laws of 1991, ch. 515, § 16, deleting the repeal provision.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

A violation of Section 79-11-529 could be processed and prosecuted by a municipality as a violation of a municipal ordinance, pursuant to Section 21-13-19, to be heard

by the municipal judge under the authority provided in Section 21-23-7. Dye, Oct. 13, 2006, A.G. Op. 06-0474.

RESEARCH REFERENCES

ALR. Criminal offenses under statutes and ordinances regulating charitable solicitations. 76 A.L.R.3d 924.

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

SEC.

- 79-11-601. Definitions.
- 79-11-603. Appropriations for expenditures.
- 79-11-605. Application of act to certain gift instruments.
- 79-11-607. Governing board; powers and duties regarding investments.
- 79-11-609. Governing board; powers and duties regarding delegation, contracting, and payment of compensation.
- 79-11-611. Governing board; duty of care.
- 79-11-613. Release of restrictions imposed by gift instruments; donor consent; application to chancery court.
- 79-11-615. Application and construction of Sections 79-11-601 through 79-11-617.
- 79-11-617. Short title.

§ 79-11-601. Definitions.

For the purposes of Sections 79-11-601 through 79-11-617:

(a) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(b) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include (i) a fund held for an institution by a trustee that is not an institution, or (ii) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(c) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(d) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(e) "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(f) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

SOURCES: Laws, 1998, ch. 417, § 1, eff from and after July 1, 1998.

§ 79-11-603. Appropriations for expenditures.

Except as otherwise provided in Section 79-11-605, the governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 79-11-611. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

SOURCES: Laws, 1998, ch. 417, § 2, eff from and after July 1, 1998.

§ 79-11-605. Application of act to certain gift instruments.

Section 79-11-603 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends" or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after July 1, 1998.

SOURCES: Laws, 1998, ch. 417, § 3, eff from and after July 1, 1998.

§ 79-11-607. Governing board; powers and duties regarding investments.

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

(a) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof;

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(c) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

SOURCES: Laws, 1998, ch. 417, § 4, eff from and after July 1, 1998.

§ 79-11-609. Governing board; powers and duties regarding delegation, contracting, and payment of compensation.

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may (a) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds, (b) contract with independent investment advisors, investment counsel or managers, banks or trust companies, so to act, and (c) authorize the payment of compensation for investment advisory or management services.

SOURCES: Laws, 1998, ch. 417, § 5, eff from and after July 1, 1998.

§ 79-11-611. Governing board; duty of care.

In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long-and short-term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions.

SOURCES: Laws, 1998, ch. 417, § 6, eff from and after July 1, 1998.

§ 79-11-613. Release of restrictions imposed by gift instruments; donor consent; application to chancery court.

(1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply in the name of the institution to the chancery court of the county in which the institution is located for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The Attorney General shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres.

SOURCES: Laws, 1998, ch. 417, § 7, eff from and after July 1, 1998.

§ 79-11-615. Application and construction of Sections 79-11-601 through 79-11-617.

Sections 79-11-601 through 79-11-617 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of these sections among those states which enact them.

SOURCES: Laws, 1998, ch. 417, § 8, eff from and after July 1, 1998.

§ 79-11-617. Short title.

Sections 79-11-601 through 79-11-617 may be cited as the "Uniform Management of Institutional Funds Act."

SOURCES: Laws, 1998, ch. 417, § 9, eff from and after July 1, 1998.

CHARITABLE GIFT ANNUITIES

SEC.

- | | |
|------------|---|
| 79-11-651. | Definitions. |
| 79-11-653. | Charitable gift annuity is not insurance. |
| 79-11-655. | Notice to donor. |
| 79-11-657. | Notice to department. |
| 79-11-659. | Effect of failure to provide required notice. |
| 79-11-661. | Not unfair or deceptive trade practice. |

§ 79-11-651. Definitions.

(1) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one (1) or two (2) lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes.

(2) "Charitable organization" means an entity described by:

(a) Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(b) Section 170(c), Internal Revenue Code of 1986 (26 U.S.C. Section 170(c)).

(3) "Qualified charitable gift annuity" means a charitable gift annuity described in Section 501(m)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 501(m)(5)), and Section 514(c)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 514(c)(5)), that is issued by a charitable organization that on the date of the annuity agreement:

(a) Has a minimum of Three Hundred Thousand Dollars (\$300,000.00) in unrestricted cash, cash equivalents, or publicly traded securities, exclusive of the assets funding the annuity agreement; and

(b) Has been in continuous operation for at least three (3) years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three (3) years.

SOURCES: Laws, 2001, ch. 332, § 1, eff from and after July 1, 2001.

§ 79-11-653. Charitable gift annuity is not insurance.

(1) The issuance of a qualified charitable gift annuity does not constitute engaging in the business of insurance in this state.

(2) A charitable gift annuity issued before July 1, 2001, is a qualified charitable gift annuity for purposes of Sections 79-11-651 through 79-11-661, and the issuance of that charitable gift annuity does not constitute engaging in the business of insurance in this state.

SOURCES: Laws, 2001, ch. 332, § 2, eff from and after July 1, 2001.

Cross References — Business of insurance, generally, see §§ 83-5-1 et seq.

Regulation of trade practices in the business of insurance, see §§ 83-5-29 through 83-5-51.

§ 79-11-655. Notice to donor.

(1) When entering into an agreement for a qualified charitable gift annuity, the charitable organization shall disclose to the donor in writing in the annuity agreement that a qualified charitable gift annuity is not insurance under the laws of this state and is not subject to regulation by the insurance commissioner or protected by an insurance guaranty association.

(2) The notice provisions required by this section must be in a separate paragraph in a print size no smaller than that employed in the annuity agreement generally.

SOURCES: Laws, 2001, ch. 332, § 3, eff from and after July 1, 2001.

Cross References — Effect of failure to comply with notice requirements imposed under this section, see § 79-11-659.

Procedure for enforcement of performance of requirements of this section by Secretary of State, see § 79-11-659.

§ 79-11-657. Notice to department.

(1) A charitable organization that issues qualified charitable gift annuities shall notify the Secretary of State in writing by the later of ninety (90) days after July 1, 2001, or the date on which it enters into the organization's first qualified charitable gift annuity agreement. The notice shall:

(a) Be signed by an officer or director of the organization;

(b) Identify the organization; and

(c) Certify that:

(i) The organization is a charitable organization; and

(ii) The annuities issued by the organization are qualified charitable gift annuities.

(2) The organization shall not be required to submit additional information except to determine appropriate penalties that may be applicable under Section 79-11-659.

SOURCES: Laws, 2001, ch. 332, § 4, eff from and after July 1, 2001.

Cross References — Effect of failure to comply with notice requirements imposed under this section, see § 79-11-659.

Procedure for enforcement of performance of requirements of this section by Secretary of State, see § 79-11-659.

§ 79-11-659. Effect of failure to provide required notice.

The failure of a charitable organization to comply with the notice requirements imposed under Section 79-11-655 or 79-11-657 does not prevent a charitable gift annuity that otherwise meets the requirements of 79-11-651 through 79-11-661 from constituting a qualified charitable gift annuity. The Secretary of State may enforce performance of the requirements of Sections 79-11-655 and 79-11-657 by sending a letter by certified mail, return receipt requested, demanding that the charitable organization comply with the requirements of Sections 79-11-655 and 79-11-657. The Secretary of State may fine the charitable organization in an amount not to exceed One Thousand Dollars (\$1,000.00) per qualified charitable gift annuity agreement issued until such time as the charitable organization complies with Sections 79-11-655 and 79-11-657.

SOURCES: Laws, 2001, ch. 332, § 5, eff from and after July 1, 2001.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference. The reference to “this act” in the first sentence was changed to “79-11-651 through 79-11-661”. The Joint Committee ratified the correction at its June 3, 2003 meeting, and the section has been reprinted in the supplement to reflect the corrected language.

§ 79-11-661. Not unfair or deceptive trade practice.

The issuance of a qualified charitable gift annuity does not constitute a violation of Sections 83-5-29 through 83-5-51 which regulate trade practices in the business of insurance.

SOURCES: Laws, 2001, ch. 332, § 6, eff from and after July 1, 2001.

Cross References — Regulation of trade practices in the business of insurance, see §§ 83-5-29 through 83-5-51.

CHAPTER 12

Partnerships [Repealed]

§§ 79-12-1 through 79-12-119. Repealed.

Repealed by Laws, 2004, ch. 458, § 1207, eff from and after January 1, 2007.

§ 79-12-1. [Laws, 1976, ch. 407, § 1, eff from and after April 1, 1977.]

§ 79-12-3. [Laws, 1976, ch. 407, § 2; Laws, 1995, ch. 353, § 1; Laws, 1997, ch. 418, § 8, eff from and after July 1, 1997.]

§ 79-12-5. [Laws, 1976, ch. 407, § 3; Laws, 1997, ch. 418, § 9, eff from and after July 1, 1997.]

§ 79-12-7. [Laws, 1976, ch. 407, § 4; Laws, 2000, ch. 469, § 51, eff from and after July 1, 2000.]

§ 79-12-9. [Laws, 1976, ch. 407, § 5, eff from and after April 1, 1977.]

§ 79-12-11. [Laws, 1976, ch. 407, § 6; Laws, 1995, ch. 353 § 2, eff from and after July 1, 1995.]

§ 79-12-13. [Laws, 1976, ch. 407, § 7, eff from and after April 1, 1977.]

§ 79-12-15. [Laws, 1976, ch. 407, § 8, eff from and after April 1, 1977.]

§ 79-12-17. [Laws, 1976, ch. 407, § 9, eff from and after April 1, 1977.]

§ 79-12-19. [Laws, 1976, ch. 407, § 10, eff from and after April 1, 1977.]

§ 79-12-21. [Laws, 1976, ch. 407, § 11, eff from and after April 1, 1977.]

§ 79-12-23. [Laws, 1976, ch. 407, § 12, eff from and after April 1, 1977.]

§ 79-12-25. [Laws, 1976, ch. 407, § 13, eff from and after April 1, 1977.]

§ 79-12-27. [Laws, 1976, ch. 407, § 14, eff from and after April 1, 1977.]

§ 79-12-29. [Laws, 1976, ch. 407, § 15; Laws, 1995, ch. 353, § 3; Laws, 1998, ch. 376, § 1, eff from and after July 1, 1998.]

§ 79-12-31. [Laws, 1976, ch. 407, § 16, eff from and after April 1, 1977.]

§ 79-12-33. [Laws, 1976, ch. 407, § 17, eff from and after April 1, 1977.]

§ 79-12-35. [Laws, 1976, ch. 407, § 18; Laws, 1995, ch. 353, § 4, eff from and after July 1, 1995.]

§ 79-12-37. [Laws, 1976, ch. 407, § 19, eff from and after April 1, 1977.]

§ 79-12-39. [Laws, 1976, ch. 407, § 20, eff from and after April 1, 1977.]

§ 79-12-41. [Laws, 1976, ch. 407, § 21, eff from and after April 1, 1977.]

§ 79-12-43. [Laws, 1976, ch. 407, § 22, eff from and after April 1, 1977.]

§ 79-12-45. [Laws, 1976, ch. 407, § 23, eff from and after April 1, 1977.]

§ 79-12-47. [Laws, 1976, ch. 407, § 24, eff from and after April 1, 1977.]

§ 79-12-49. [Laws, 1976, ch. 407, § 25, eff and after April 1, 1977.]

§ 79-12-51. [Laws, 1976, ch. 407, § 26, eff from and after April 1, 1977.]

§ 79-12-53. [Laws, 1976, ch. 407, § 27, eff from and after April 1, 1977.]

§ 79-12-55. [Laws, 1976, ch. 407, § 28, eff from and after April 1, 1977.]

§ 79-12-57. [Laws, 1976, ch. 407, § 29, eff from and after April 1, 1977.]

§ 79-12-59. [Laws, 1976, ch. 407, § 30, eff from and after April 1, 1977.]

§ 79-12-61. [Laws, 1976, ch. 407, § 31, eff from and after April 1, 1977.]

§ 79-12-63. [Laws, 1976, ch. 407, § 32, eff from and after April 1, 1977.]

- § 79-12-65. [Laws, 1976, ch. 407, § 33, eff from and after April 1, 1977.]
- § 79-12-67. [Laws, 1976, ch. 407, § 34; Laws, 1995, ch. 353, § 5, eff from and after July 1, 1995.]
- § 79-12-69. [Laws, 1976, ch. 407, § 35; Laws, 1995, ch. 353, § 6, eff from and after July 1, 1995.]
- § 79-12-71. [Laws, 1976, ch. 407, § 36; Laws, 1995, ch. 353, § 7, eff from and after July 1, 1995.]
- § 79-12-73. [Laws, 1976, ch. 407, § 37, eff from and after April 1, 1977.]
- § 79-12-75. [Laws, 1976, ch. 407, § 38, eff from and after April 1, 1977.]
- § 79-12-77. [Laws, 1976, ch. 407, § 39, eff from and after April 1, 1977.]
- § 79-12-79. [Laws, 1976, ch. 407, § 40; Laws, 1995, ch. 353, § 8, eff from and after July 1, 1995.]
- § 79-12-81. [Laws, 1976, ch. 407, § 41, eff from and after April 1, 1977.]
- § 79-12-83. [Laws, 1976, ch. 407, § 42, eff from and after April 1, 1977.]
- § 79-12-85. [Laws, 1976, ch. 407, § 43, eff from and after April 1, 1977.]
- § 79-12-87. [Laws, 1995, ch. 353, § 9; Laws, 1997, ch. 418, § 10, eff from and after July 1, 1997.]
- § 79-12-89. [Laws, 1995, ch. 353, § 10, eff from and after July 1, 1995.]
- § 79-12-91. [Laws, 1995, ch. 353, § 11, eff from and after July 1, 1995.]
- § 79-12-93. [Laws, 1995, ch. 353, § 12, eff from and after July 1, 1995.]
- § 79-12-95. [Laws, 1995, ch. 353, § 13, eff from and after July 1, 1995.]
- § 79-12-97. [Laws, 1995, ch. 353, § 14, eff from and after July 1, 1995.]
- § 79-12-99. [Laws, 1995, ch. 353, § 15, eff from and after July 1, 1995.]
- § 79-12-101. [Laws, 1995, ch. 353, § 16, eff from and after July 1, 1995.]
- § 79-12-103. [Laws, 1995, ch. 353, § 17, eff from and after July 1, 1995.]
- § 79-12-105. [Laws, 1995, ch. 353, § 18, eff from and after July 1, 1995.]
- § 79-12-107. [Laws, 1995, ch. 353, § 19, eff from and after July 1, 1995.]
- § 79-12-109. [Laws, 1995, ch. 353, § 20; Laws, 1997, ch. 418, § 11, eff from and after July 1, 1997.]
- § 79-12-111. [Laws, 1995, ch. 353, § 21, eff from and after July 1, 1995.]
- § 79-12-113. [Laws, 1995, ch. 353, § 22, eff from and after July 1, 1995.]
- § 79-12-115. [Laws, 1995, ch. 353, § 23, eff from and after July 1, 1995.]
- § 79-12-117. [Laws, 1995, ch. 353, § 24, eff from and after July 1, 1995.]
- § 79-12-119. [Laws, 1995, ch. 353, § 25, eff from and after July 1, 1995.]

Editor's Note — Former §§ 79-12-1 through 79-12-119 related to the Mississippi Uniform Partnership Law. For similar present provisions, see the Uniform Partnership Act, §§ 79-13-101 et seq.

Cross References — Mississippi Limited Partnership Act, see §§ 79-14-101 et seq.

Comparable Laws from other States — Alabama Code, §§ 10-8A-101 through 10-8A-1109.

Arkansas Code Annotated, §§ 4-46-101 through 4-46-1207.

Florida Annotated Statutes, §§ 620.81001 through 620.9902.

Georgia Code Annotated, §§ 14-8-1 through 14-8-64.

North Carolina General Statutes, §§ 59-31 through 59-73.

South Carolina Code Annotated, §§ 33-41-10 through 33-41-1330.

Tennessee Code Annotated, §§ 61-1-101 through 61-1-1208.

Texas Annotated Statutes, Article §§ 152.001 through 152.914.

RESEARCH REFERENCES

- Am Jur.** 59A Am. Jur. 2d, Partnership
§§ 1 et seq. nership Law, see Am. Jur. 2d Desk Book,
Item No. 124.
- Jurisdictions adopting Uniform Part- **CJS.** 68 C.J.S., Partnership §§ 1 et seq.

CHAPTER 13

Uniform Partnership Act (1997)

Article 1.	General Provisions	79-13-101
Article 2.	Nature of Partnership	79-13-201
Article 3.	Relations of partners to persons dealing with partnership	79-13-301
Article 4.	Relations of partners to each other and to partnership	79-13-401
Article 5.	Transferees and Creditors of Partner	79-13-501
Article 6.	Partner's Dissociation	79-13-601
Article 7.	Partner's dissociation when business not wound up	79-13-701
Article 8.	Winding up partnership business	79-13-801
Article 9.	Conversions and Mergers	79-13-901
Article 10.	Limited Liability Partnership	79-13-1001
Article 11.	Foreign limited liability partnership	79-13-1101
Article 12.	Miscellaneous Provisions	79-13-1201

Editor's Note — A former Chapter 13, entitled "Limited Partnerships," was repealed by Laws of 1987, ch. 488, § 1105, effective from and after January 1, 1988 (codified as § 79-14-1105). Former Chapter 13 contained the following undesignated headings:

"Mississippi Uniform Limited Partnership Law" [Codes, 1942, §§ 5553-01 through 5553-29; Laws, 1964, ch. 271, §§ 1 through 29], comprising former §§ 79-13-1 through 79-13-57;

"Limited Partnerships Under Prior Laws" [Codes, Hutchinson's 1848, ch. 40, art 1; 1857, ch. 38, art. 1 et seq; 1871, §§ 1857-1877; 1880, §§ 1005-1024; 1892, §§ 2764-2781; 1906, §§ 3129-3146; Hemingway's 1917, §§ 5467-5484; 1930, §§ 5394-5411; 1942, §§ 5553-5570; Laws, 1942, ch. 320; Laws, 1944, ch. 310, § 1; Laws, 1962, ch. 510, §§ 1 through 3], comprising former §§ 79-13-101 through 79-13-137; and

"Foreign Limited Partnerships" [Laws, 1979, ch. 420, §§ 2 through 10], comprising former §§ 79-13-201 through 79-13-217.

For present similar provisions relating to limited partnerships, see §§ 79-14-101 et seq.

ARTICLE 1.

GENERAL PROVISIONS.

SEC.

79-13-101.	Definitions.
79-13-102.	Knowledge and notice.
79-13-103.	Effect of partnership agreement; nonwaivable provisions.
79-13-104.	Supplemental principles of law.
79-13-105.	Execution, filing, and recording of statements.
79-13-106.	Governing law.
79-13-107.	Partnership subject to amendment or repeal of chapter.

§ 79-13-101. Definitions.

In this chapter:

- (1) "Business" includes every trade, occupation, and profession.
- (2) "Debtor in bankruptcy" means a person who is the subject of:

(i) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(ii) A comparable order under federal, state, or foreign law governing insolvency.

(3) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.

(4) “Foreign limited liability partnership” means a partnership that:

(i) Is formed under laws other than the laws of this state; and

(ii) Has the status of a limited liability partnership under those laws.

(5) “Limited liability partnership” means a partnership that has filed a statement of qualification under Section 79-13-1001 and does not have a similar statement in effect in any other jurisdiction.

(6) “Partnership” means an association of two (2) or more persons to carry on as co-owners a business for profit formed under Section 79-13-202, predecessor law, or comparable law of another jurisdiction.

(7) “Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(8) “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(9) “Partnership interest” or “partner’s interest in the partnership” means all of a partner’s interests in the partnership, including the partner’s transferable interest and all management and other rights.

(10) “Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) “Property” means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(12) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(13) “Statement” means a statement of partnership authority under Section 79-13-303, a statement of denial under Section 79-13-304, a statement of dissociation under Section 79-13-704, a statement of dissolution under Section 79-13-805, a statement of merger under Section 79-13-907, a statement of qualification under Section 79-13-1001, a statement of foreign qualification under Section 79-13-1102, or an amendment or cancellation of any of the foregoing.

(14) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SOURCES: Laws, 2004, ch. 458, § 101, eff from and after Jan. 1, 2005.

Editor's Note — Former § 79-13-101 was repealed by Laws of 1987, ch. 488, § 1105 (codified as § 79-14-1105), effective from and after January 1, 1988. See Editor's Note under Chapter 13 heading.

RESEARCH REFERENCES

Law Reviews. Comment: When Duty Calls: Should the Duty of Majority to Minority Shareholders in Closely Held Corporations Change as a Result of the New Revised Uniform Partnership Act?, 25 Miss. C. L. Rev. 171, Spring, 2006.

§ 79-13-102. Knowledge and notice.

- (a) A person knows a fact if the person has actual knowledge of it.
- (b) A person has notice of a fact if the person:
 - (1) Knows of it;
 - (2) Has received a notification of it; or
 - (3) Has reason to know it exists from all of the facts known to the person at the time in question.
- (c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.
- (d) A person receives a notification when the notification:
 - (1) Comes to the person's attention; or
 - (2) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.
- (e) Except as otherwise provided in subsection (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
- (f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

SOURCES: Laws, 2004, ch. 458, § 102, eff from and after Jan. 1, 2005.

§ 79-13-103. Effect of partnership agreement; nonwaivable provisions.

(a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) Vary the rights and duties under Section 79-13-105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under Section 79-13-403(b);

(3) Eliminate the duty of loyalty under Section 79-13-404(b) or 79-13-603(b) (3), but:

(i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under Section 79-13-404(c) or 79-13-603(b) (3);

(5) Eliminate the obligation of good faith and fair dealing under Section 79-13-404(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner under Section 79-13-602(a), except to require the notice under Section 79-13-601(1) to be in writing;

(7) Vary the right of a court to expel a partner in the events specified in Section 79-13-601(5);

(8) Vary the requirement to wind up the partnership business in cases specified in Section 79-13-801(4), (5), or (6);

(9) Vary the law applicable to a limited liability partnership under Section 79-13-106(b); or

(10) Restrict rights of third parties under this chapter.

SOURCES: Laws, 2004, ch. 458, § 103, eff from and after Jan. 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (a). “This chapter” was substituted for “this act” in the second sentence.

Editor’s Note — Former § 79-13-103 was repealed by Laws of 1987, ch. 488, § 1105 (codified as § 79-14-1105), effective from and after January 1, 1988. See Editor’s Note under Chapter 13 heading.

§ 79-13-104. Supplemental principles of law.

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in Section 75-17-1(1), Mississippi Code of 1972.

SOURCES: Laws, 2004, ch. 458, § 104, eff from and after Jan. 1, 2005.

§ 79-13-105. Execution, filing, and recording of statements.

(a) A statement may be filed in the Office of the Secretary of State. A certified copy of a statement that is filed in an office in another state may be filed in the Office of the Secretary of State. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(b) A certified copy of a statement that has been filed in the Office of the Secretary of State and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the Office of the Secretary of State does not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The Secretary of State shall charge and collect fees in the amounts specified for the following purposes:

(i) Filing of Statement of Qualification or Statement of Foreign Qualification — Two Hundred Fifty Dollars (\$250.00).

(ii) Filing of Certificate Correcting or Amending a Statement of Qualification or Statement of Foreign Qualification — Fifty Dollars (\$50.00).

(iii) Filing of Certificate of Cancellation of Statement of Qualification or Statement of Foreign Qualification — Twenty-five Dollars (\$25.00).

(iv) Any other statement required or permitted to be filed by this chapter — Twenty-five Dollars (\$25.00).

(g) The Secretary of State shall have the powers reasonably necessary to perform the duties required of him under the provisions of this chapter.

SOURCES: Laws, 2004, ch. 458, § 105; Laws, 2007, ch. 391, § 1, eff from and after July 1, 2007.

Editor's Note — Former § 79-13-105 was repealed by Laws of 1987, ch. 488, § 1105 (codified as § 79-14-1105), effective from and after January 1, 1988. See Editor's Note under Chapter 13 heading.

Amendment Notes — The 2007 amendment substituted "Statement of Qualification or Statement of Foreign Qualification" for "Certificate of Registration of Domestic or Foreign Limited Liability Partnership" throughout (f); and substituted "statement" for "document" in (f)(iv).

§ 79-13-106. Governing law.

(a) Except as otherwise provided in subsection (b), the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

SOURCES: Laws, 2004, ch. 458, § 106, eff from and after Jan. 1, 2005.

§ 79-13-107. Partnership subject to amendment or repeal of chapter.

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

SOURCES: Laws, 2004, ch. 458, § 107, eff from and after Jan. 1, 2005.

Editor's Note — Former § 79-13-107 was repealed by Laws of 1987, ch. 488, § 1105 (codified as § 79-14-1105), effective from and after January 1, 1988. See Editor's Note under Chapter 13 heading.

ARTICLE 2.

NATURE OF PARTNERSHIP.

SEC.

- 79-13-201. Partnership as entity.
- 79-13-202. Formation of partnership.
- 79-13-203. Partnership property.
- 79-13-204. When property is partnership property.

§ 79-13-201. Partnership as entity.

(a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under Section 79-13-1001.

SOURCES: Laws, 2004, ch. 458, § 201, eff from and after Jan. 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (b). “Section 79-13-1001” was substituted for “Section 79-13-1201.”

Editor’s Note — Former § 79-13-201 was repealed by Laws of 1987, ch. 488, § 1105 (codified as § 79-14-1105), effective from and after January 1, 1988. See Editor’s Note under Chapter 13 heading.

Cross References — Conversion of partnership to limited partnership, see § 79-13-902.

§ 79-13-202. Formation of partnership.

(a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners of a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

- (i) Of a debt by installments or otherwise;
- (ii) For services as an independent contractor or of wages or other compensation to an employee;
- (iii) Of rent;
- (iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
- (v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
- (vi) For the sale of the goodwill of a business or other property by installments or otherwise.

SOURCES: Laws, 2004, ch. 458, § 202, eff from and after Jan. 1, 2005.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in subsection (1) was corrected by inserting the word “of” following “carry on as co-owners.”

§ 79-13-203. Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

SOURCES: Laws, 2004, ch. 458, § 203, eff from and after Jan. 1, 2005.

Editor's Note — Former § 79-13-203 was repealed by Laws of 1987, ch. 488, § 1105 (codified as § 79-14-1105), effective from and after January 1, 1988. See Editor's Note under Chapter 13 heading.

Cross References — Partner not co-owner of partnership property, see § 79-13-501.

§ 79-13-204. When property is partnership property.

(a) Property is partnership property if acquired in the name of:

(1) The partnership; or

(2) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) The partnership in its name; or

(2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

SOURCES: Laws, 2004, ch. 458, § 204, eff from and after Jan. 1, 2005.

Cross References — Transfer of partnership property, see § 79-13-302.

Partner not co-owner of partnership property, see §§ 79-13-501.

ARTICLE 3.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP.

SEC.

- 79-13-301. Partner agent of partnership.
- 79-13-302. Transfer of partnership property.
- 79-13-303. Statement of partnership authority.
- 79-13-304. Statement of denial.
- 79-13-305. Partnership liable for partner's actionable conduct.
- 79-13-306. Partner's liability.
- 79-13-307. Actions by and against partnership and partners.
- 79-13-308. Liability of purported partner.

§ 79-13-301. Partner agent of partnership.

Subject to the effect of a statement of partnership authority under Section 79-13-303:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

SOURCES: Laws, 2004, ch. 458, § 301, eff from and after Jan. 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory language by substituting "Section 79-13-303" for "Section 79-13-503."

Cross References — Effect of parnter's act after dissolution, see § 79-13-804.

§ 79-13-302. Transfer of partnership property.

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under Section 79-13-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an

instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under 79-13-301 and:

(1) As to a subsequent transferee who gave value for property transferred under subsection (a) (1) and (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) As to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

SOURCES: Laws, 2004, ch. 458, § 302, eff from and after Jan. 1, 2005.

Cross References — When property is partnership property, see §§ 79-13-203, 79-13-204.

Property of surviving entity of merger, see § 79-13-907.

§ 79-13-303. Statement of partnership authority.

(a) A partnership may file a statement of partnership authority, which:

(1) Must include:

(i) The name of the partnership;

(ii) The street address of its chief executive office and of one office in this state, if there is one;

(iii) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b); and

(iv) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to Section 79-13-105(c) and states the name of the partnership but does not contain all of the other information required by subsection (a), the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e).

(d) Except as otherwise provided in subsection (g), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) and Sections 79-13-704 and 79-13-805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five (5) years after the date on which the statement, or the most recent amendment, was filed with the Secretary of State.

SOURCES: Laws, 2004, ch. 458, § 303, eff from and after Jan. 1, 2005.

Cross References — Execution, filing and recording of statements, see § 79-13-105.
Filing fees, see § 79-13-105.

Transfer of partnership property, see § 79-13-302.

Statement of denial as a limitation on authority as provided in (d) and (e) of this section, see § 79-13-304.

Statement of dissolution as a limitation on authority for the purposes of § 79-13-303(e), see § 79-13-805.

§ 79-13-304. Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Section 79-13-303(b) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in Section 79-13-303(d) and (e).

SOURCES: Laws, 2004, ch. 458, § 304, eff from and after Jan. 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first and last sentences by substituting "Section 79-13-303(b)" for "Section 79-13-503(b)" and "Section 79-13-303(d)" for "Section 79-13-503(d)," respectively.

Cross References — Execution, filing and recording of statements, see § 79-13-105. Filing fees, see § 79-13-105.

§ 79-13-305. Partnership liable for partner's actionable conduct.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

SOURCES: Laws, 2004, ch. 458, § 305, eff from and after Jan. 1, 2005.

Cross References — Partner's liability, see § 79-13-306.

Actions against partnerships and partners, see § 79-13-307.

Liability of purported partner, see § 79-13-308.

§ 79-13-306. Partner's liability.

(a) Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under Section 79-13-1001(b).

SOURCES: Laws, 2004, ch. 458, § 306, eff from and after Jan. 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c). “Section 79-13-1001(b)” was substituted for “Section 79-13-1201(b)” at the end of the last sentence.

Cross References — Partnership’s liability, see § 79-13-305.

Actions against partnership and partners, see § 79-13-307.

Liability of purported partners, see § 79-13-308.

Partner’s liability to other partners after dissolution, see § 79-13-806.

Liability of general partner who becomes limited partner as result of conversion, see § 79-13-902.

Liability of partner of domestic partnership that is a party to a merger, see § 79-13-906.

§ 79-13-307. Actions by and against partnership and partners.

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with Section 79-13-306, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner’s assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 79-13-306 and:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) The partnership is a debtor in bankruptcy;

(3) The partner has agreed that the creditor need not exhaust partnership assets;

(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the

grant of permission is an appropriate exercise of the court's equitable powers; or

(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 79-13-308.

SOURCES: Laws, 2004, ch. 458, § 307, eff from and after Jan. 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (b), (d) and (e). “Section 79-13-306” was substituted for “Section 79-13-506” in (b) and (d), and “Section 79-13-308” was substituted for “Section 79-13-508” in (e).

Cross References — Partnership's liability, see § 79-13-305.

Partner's liability see § 79-13-306.

Liability of purported partner, see § 79-13-308.

§ 79-13-308. Liability of purported partner.

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of

partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

SOURCES: Laws, 2004, ch. 458, § 308, eff from and after Jan. 1, 2005.

Cross References — Partnership's liability, see § 79-13-305.

Partner's liability, see § 79-13-306.

Actions against partners and partnerships, see § 79-13-307.

ARTICLE 4.

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP.

SEC.

- 79-13-401. Partner's rights and duties.
- 79-13-402. Distributions in kind.
- 79-13-403. Partner's rights and duties with respect to information.
- 79-13-404. General standards of partner's conduct.
- 79-13-405. Actions by partnership and partners.
- 79-13-406. Continuation of partnership beyond definite term or particular undertaking.

§ 79-13-401. Partner's rights and duties.

(a) Each partner is deemed to have an account that is:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 79-13-301.

SOURCES: Laws, 2004, ch. 458, § 401, eff from and after Jan. 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (k). “Section 79-13-301” was substituted for “Section 79-13-501.”

Cross References — When property is partnership property, see §§ 79-13-203, 79-13-204.

Partner’s rights and duties with respect to information, see § 79-13-403.

§ 79-13-402. Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

SOURCES: Laws, 2004, ch. 458, § 402, eff from and after Jan. 1, 2005.

§ 79-13-403. Partner’s rights and duties with respect to information.

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership’s business and affairs reasonably required for the proper exercise of the partner’s rights and duties under the partnership agreement or this chapter; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

SOURCES: Laws, 2004, ch. 458, § 403, eff from and after Jan. 1, 2005.

Cross References — Partners rights and duties generally, see § 79-13-401.

§ 79-13-404. General standards of partner's conduct.

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

SOURCES: Laws, 2004, ch. 458, § 404, eff from and after Jan. 1, 2005.

RESEARCH REFERENCES

Law Reviews. Comment: When Duty Minority Shareholders in Closely Held Calls: Should the Duty of Majority to Corporations Change as a Result of the

New Revised Uniform Partnership Act?,
25 Miss. C. L. Rev. 171, Spring, 2006.

§ 79-13-405. Actions by partnership and partners.

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(1) Enforce the partner's rights under the partnership agreement;

(2) Enforce the partner's rights under this chapter, including:

(i) The partner's rights under Sections 79-13-401, 79-13-403, or 79-13-404;

(ii) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 79-13-701 or enforce any other right under Article 6 or 7; or

(iii) The partner's right to compel a dissolution and winding up of the partnership business under or enforce any other right under Article 8; or

(3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

SOURCES: Laws, 2004, ch. 458, § 405, eff from and after Jan. 1, 2005.

§ 79-13-406. Continuation of partnership beyond definite term or particular undertaking.

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

SOURCES: Laws, 2004, ch. 458, § 406, eff from and after Jan. 1, 2005.

ARTICLE 5.

TRANSFEREES AND CREDITORS OF PARTNER.

SEC.

- 79-13-501. Partner not co-owner of partnership property.
- 79-13-502. Partner's transferable interest in partnership.
- 79-13-503. Transfer of partner's transferable interest.
- 79-13-504. Partner's transferable interest subject to charging order.

§ 79-13-501. Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

SOURCES: Laws, 2004, ch. 458, § 501, eff from and after Jan. 1, 2005.

§ 79-13-502. Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

SOURCES: Laws, 2004, ch. 458, § 502, eff from and after Jan. 1, 2005.

§ 79-13-503. Transfer of partner's transferable interest.

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (1) Is permissible;
- (2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
- (3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

- (1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- (2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
- (3) To seek under Section 79-13-801(6) a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

SOURCES: Laws, 2004, ch. 458, § 503, eff from and after Jan. 1, 2005.

§ 79-13-504. Partner's transferable interest subject to charging order.

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than partnership property, by one or more of the other partners; or

(3) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

SOURCES: Laws, 2004, ch. 458, § 504, eff from and after Jan. 1, 2005.

ARTICLE 6.

PARTNER'S DISSOCIATION.

SEC.

79-13-601. Events causing partner's dissociation.

79-13-602. Partner's power to dissociate; wrongful dissociation.

79-13-603. Effect of partner's dissociation.

§ 79-13-601. Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(i) It is unlawful to carry on the partnership business with that partner;

(ii) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) Within ninety (90) days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(i) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(ii) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 79-13-404; or

(iii) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner's:

(i) Becoming a debtor in bankruptcy;

(ii) Executing an assignment for the benefit of creditors;

(iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(iv) Failing, within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

- (i) The partner's death;
- (ii) The appointment of a guardian or general conservator for the partner; or
- (iii) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

SOURCES: Laws, 2004, ch. 458, § 601, eff from and after Jan. 1, 2005.

§ 79-13-602. Partner's power to dissociate; wrongful dissociation.

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Section 79-13-601(1).

(b) A partner's dissociation is wrongful only if:

(1) It is in breach of an express provision of the partnership agreement; or

(2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) The partner withdraws by express will, unless the withdrawal follows within ninety (90) days after another partner's dissociation by death or otherwise under Section 79-13-601(6) through (10) or wrongful dissociation under this subsection;

(ii) The partner is expelled by judicial determination under Section 79-13-601(5);

(iii) The partner is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

SOURCES: Laws, 2004, ch. 458, § 602, eff from and after Jan. 1, 2005.

§ 79-13-603. Effect of partner's dissociation.

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 applies; otherwise, Article 7 applies.

(b) Upon a partner's dissociation:

(1) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 79-13-803;

(2) The partner's duty of loyalty under Section 79-13-404(b) (3) terminates; and

(3) The partner's duty of loyalty under Section 79-13-404(b) (1) and (2) and duty of care under Section 79-13-404(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 79-13-803.

SOURCES: Laws, 2004, ch. 458, § 603, eff from and after Jan. 1, 2005.

ARTICLE 7.

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP.

SEC.

- 79-13-701. Purchase of dissociated partner's interest.
- 79-13-702. Dissociated partner's power to bind and liability to partnership.
- 79-13-703. Dissociated partner's liability to other persons.
- 79-13-704. Statement of dissociation.
- 79-13-705. Continued use of partnership name.

§ 79-13-701. Purchase of dissociated partner's interest.

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 79-13-801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 79-13-807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under Section 79-13-602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 79-13-702.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty (120) days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) must be accompanied by the following:

(1) A statement of partnership assets and liabilities as of the date of dissociation;

(2) The latest available partnership balance sheet and income statement, if any;

(3) An explanation of how the estimated amount of the payment was calculated; and

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty (120) days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 79-13-405(b)(2) (ii), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within one hundred twenty (120) days after the partnership has tendered payment or an offer to pay or within one (1) year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court

may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

SOURCES: Laws, 2004, ch. 458, § 701, eff from and after Jan. 1, 2005.

Cross References — Applicability of Article 7 to partner's dissociation, see § 79-13-603.

§ 79-13-702. Dissociated partner's power to bind and liability to partnership.

(a) For one (1) year after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner which would have bound the partnership under Section 79-13-301 before dissociation only if at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner's dissociation; and
- (3) Is not deemed to have had knowledge under Section 79-13-303(e) or notice under Section 79-13-704(c).

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a).

SOURCES: Laws, 2004, ch. 458, § 702, eff from and after Jan. 1, 2005.

§ 79-13-703. Dissociated partner's liability to other persons.

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (b).

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9, within one (1) year after the partner's dissociation, only if the partner is liable for the obligation under Section 79-13-306 and at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner's dissociation; and

(3) Is not deemed to have had knowledge under Section 79-13-303(e) or notice under Section 79-13-704(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

SOURCES: Laws, 2004, ch. 458, § 703, eff from and after Jan. 1, 2005.

§ 79-13-704. Statement of dissociation.

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 79-13-303(d) and (e).

(c) For the purposes of Sections 79-13-702(a)(3) and 79-13-703(b)(3), a person not a partner is deemed to have notice of the dissociation thirty (30) days after the statement of dissociation is filed.

SOURCES: Laws, 2004, ch. 458, § 704, eff from and after Jan. 1, 2005.

Cross References — Execution, filing and recording of statements, see § 79-13-105. Filing fees, see § 79-13-105.

§ 79-13-705. Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

SOURCES: Laws, 2004, ch. 458, § 705, eff from and after Jan. 1, 2005.

ARTICLE 8.

WINDING UP PARTNERSHIP BUSINESS.

SEC.

- | | |
|------------|--|
| 79-13-801. | Events causing dissolution and winding up of partnership business. |
| 79-13-802. | Partnership continues after dissolution. |
| 79-13-803. | Right to wind up partnership business. |
| 79-13-804. | Partner's power to bind partnership after dissolution. |
| 79-13-805. | Statement of dissolution. |
| 79-13-806. | Partner's liability to other partners after dissolution. |
| 79-13-807. | Settlement of accounts and contributions among partners. |

§ 79-13-801. Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Section 79-13-601(2) through (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(i) Within ninety (90) days after a partner's dissociation by death or otherwise under Section 79-13-601(6) through (10) or wrongful dissociation under Section 79-13-602(b), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to Section 79-13-602(b)(2)(i) constitutes the expression of that partner's will to wind up the partnership business;

(ii) The express will of all of the partners to wind up the partnership business; or

(iii) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety (90) days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) On application by a partner, a judicial determination that:

(i) The economic purpose of the partnership is likely to be unreasonably frustrated;

(ii) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(iii) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(i) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(ii) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

SOURCES: Laws, 2004, ch. 458, § 801, eff from and after Jan. 1, 2005.

Cross References — Right of transferee of a partner's transferable interest in the partnership to seek judicial determination under this section that it is equitable to wind up partnership business, see § 79-13-503.

§ 79-13-802. Partnership continues after dissolution.

(a) Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) The rights of a third party accruing under Section 79-13-804(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

SOURCES: Laws, 2004, ch. 458, § 802, eff from and after Jan. 1, 2005.

§ 79-13-803. Right to wind up partnership business.

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the chancery court of the county in which the partnership's chief executive office is located, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 79-13-807, settle disputes by mediation or arbitration, and perform other necessary acts.

SOURCES: Laws, 2004, ch. 458, § 803, eff from and after Jan. 1, 2005.

Cross References — Applicability of Article 8 to partner's dissociation, see § 79-13-603.

§ 79-13-804. Partner's power to bind partnership after dissolution.

Subject to Section 79-13-805, a partnership is bound by a partner's act after dissolution that:

- (1) Is appropriate for winding up the partnership business; or
- (2) Would have bound the partnership under Section 79-13-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

SOURCES: Laws, 2004, ch. 458, § 804, eff from and after Jan. 1, 2005.

§ 79-13-805. Statement of dissolution.

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 79-13-303(d) and is a limitation on authority for the purposes of Section 79-13-303(e).

(c) For the purposes of Sections 79-13-301 and 79-13-804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution thirty (30) days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in Section 79-13-303(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

SOURCES: Laws, 2004, ch. 458, § 805, eff from and after Jan. 1, 2005.

Cross References — Execution, filing and recording of statements, see § 79-13-105. Filing fees, see § 79-13-105.

§ 79-13-806. Partner's liability to other partners after dissolution.

(a) Except as otherwise provided in subsection (b) and Section 79-13-306, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 79-13-804.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under Section 79-13-804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

SOURCES: Laws, 2004, ch. 458, § 806, eff from and after Jan. 1, 2005.

§ 79-13-807. Settlement of accounts and contributions among partners.

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 79-13-306.

(c) If a partner fails to contribute the full amount required under subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under Section 79-13-306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 79-13-306.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 79-13-306.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

SOURCES: Laws, 2004, ch. 458, § 807, eff from and after Jan. 1, 2005.

ARTICLE 9.**CONVERSIONS AND MERGERS.****SEC.**

- | | |
|------------|---|
| 79-13-901. | Definitions. |
| 79-13-902. | Conversion of partnership to limited partnership. |
| 79-13-903. | Reserved |

- 79-13-904. Effect of conversion; entity unchanged.
- 79-13-905. Merger.
- 79-13-906. Effect of merger.
- 79-13-907. Statement of merger.
- 79-13-908. Nonexclusive.

§ 79-13-901. Definitions.

In this article:

(1) "Domestic partnership" means a partnership the internal affairs of which are governed by this chapter.

(2) "Entity" means any association or legal entity organized to conduct business, including, without limitation, for profit and nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.

(3) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(4) "Limited partner" means a limited partner in a limited partnership.

(5) "Limited partnership" means a limited partnership created under the Mississippi Limited Partnership Act (Section 79-14-101 et seq.), predecessor law, or comparable law of another jurisdiction.

(6) "Partner" includes both a general partner and a limited partner.

SOURCES: Laws, 2004, ch. 458, § 901, eff from and after Jan. 1, 2005.

§ 79-13-902. Conversion of partnership to limited partnership.

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed containing the information required to be contained in a certificate of limited partnership in such jurisdiction and additionally including:

(1) A statement that the partnership was converted to a limited partnership from a partnership;

(2) Its former name; and

(3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety (90) days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Mississippi Limited Partnership Act.

SOURCES: Laws, 2004, ch. 458, § 902, eff from and after Jan. 1, 2005.

Cross References — Mississippi Limited Partnership Act, see §§ 79-14-101 et seq.

§ 79-13-903. Reserved.

SOURCES: Laws, 2004, ch. 458, § 903, eff from and after Jan. 1, 2005.

§ 79-13-904. Effect of conversion; entity unchanged.

(a) A partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership remains vested in the converted entity;

(2) All obligations of the converting partnership continue as obligations of the converted entity; and

(3) An action* or proceeding pending against the converting partnership may be continued as if the conversion had not occurred.

(c) Except for the provisions of Section 79-13-902 and this section, from and after the effective date of conversion the converted limited partnership shall be governed by the provisions of the Mississippi Limited Partnership Act.

SOURCES: Laws, 2004, ch. 458, § 904, eff from and after Jan. 1, 2005.

Cross References — Mississippi Limited Partnership Act, see §§ 79-14-101 et seq.

§ 79-13-905. Merger.

(a) Unless otherwise provided in the partnership agreement, pursuant to a plan of merger approved as provided in subsection (d), one or more domestic partnerships may be merged with a domestic or foreign entity.

(b) A domestic or foreign entity may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(1) The merger is permitted by the laws under which the entity is organized or by which it is governed; and

(2) In effecting the merger, the entity complies with such laws and with its organizational documents.

(c) The plan of merger must set forth:

- (1) The name of each entity that is a party to the merger;
- (2) The name of the entity that will be the survivor of the merger;
- (3) If the surviving entity is a partnership or a limited partnership, the status of each partner;
- (4) The terms and conditions of the merger;
- (5) The manner and basis of converting the interests of each party to the merger into shares or other securities, interests, obligations, or rights to acquire shares or other securities of the surviving entity, or into money or other property, or any combination of the foregoing;
- (6) The organizational documents of any entity to be created by the merger, or if a new entity is not to be created by the merger, any amendments to the survivor's organizational documents;
- (7) The street address of the surviving entity's chief executive office; and
- (8) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the organizational documents of any such party.

(d) The plan of merger must be approved:

- (1) In the case of a domestic partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
- (2) In the case of a domestic limited liability partnership that is a party to a merger where the surviving entity is a partnership other than a limited liability partnership, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(f) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(g) The merger takes effect on the later of:

- (1) The approval of the plan of merger by all parties to the merger, as provided in subsection (d);
- (2) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or
- (3) Any effective date specified in the plan of merger.

SOURCES: Laws, 2004, ch. 458, § 905, eff from and after Jan. 1, 2005.

§ 79-13-906. Effect of merger.

(a) When a merger takes effect:

- (1) The separate existence of every domestic partnership that is a party to the merger, other than the surviving entity, ceases;
- (2) All property owned by each of the merged domestic partnerships vests in the surviving entity;
- (3) All obligations of every domestic partnership that is a party to the merger become the obligations of the surviving entity; and

(4) An action or proceeding pending against a domestic partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The Secretary of State of this state is the agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of a domestic partnership that is a party to a merger. The surviving foreign entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the surviving foreign entity.

(c) A partner of a domestic partnership which is a party to a merger remains liable for all obligations incurred by such domestic partnership before the merger and for which the partner was personally liable before the merger.

(d) Without affecting any liability a partner may have in accordance with the provisions of subsection (c) of this section, a partner of a domestic partnership which is the survivor of a merger:

(1) Shall not become personally liable as a result of the merger for obligations of the surviving partnership incurred before the merger by a party to the merger of which that partner was not a general partner; and

(2) Except as otherwise provided in Section 79-13-306, shall become personally liable for all obligations of the surviving partnership incurred after the merger takes effect.

(e) In the case of a partner of a domestic partnership which is a party to a merger who does not become a partner, shareholder, member or other equity owner of the surviving entity:

(1) The surviving entity shall cause the partner's interest in the partnership to be purchased under Section 79-13-701; and

(2) If the surviving entity is a domestic partnership, the surviving partnership is bound under Section 79-13-702 by an act of the terminated partner, and the terminated partner is liable under Section 79-13-703 for transactions entered into by the surviving partnership after the merger takes effect.

SOURCES: Laws, 2004, ch. 458, § 906, eff from and after Jan. 1, 2005.

§ 79-13-907. Statement of merger.

(a) After a merger, the surviving domestic or foreign entity may file a statement that one or more domestic partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) The name of each entity that is a party to the merger;

(2) The name and domicile of the entity that will be the survivor of the merger;

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any; and

(4) The type of entity of the surviving entity is (e.g., partnership, limited partnership, for profit corporation, etc.).

(c) Except as otherwise provided in subsection (d), for the purposes of Section 79-13-302, property of the surviving entity which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of Section 79-13-302, real property of the surviving entity which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to Section 79-13-105(c), stating the name of a partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b), operates with respect to the partnerships named to the extent provided in subsections (c) and (d).

SOURCES: Laws, 2004, ch. 458, § 907, eff from and after Jan. 1, 2005.

Cross References — Execution, filing and recording of statements, see § 79-13-105. Filing fees, see § 79-13-105.

§ 79-13-908. Nonexclusive.

This article is not exclusive. Partnerships may be converted or merged in any other manner provided by law.

SOURCES: Laws, 2004, ch. 458, § 908, eff from and after Jan. 1, 2005.

ARTICLE 10.

LIMITED LIABILITY PARTNERSHIP.

SEC.

79-13-1001. Statement of qualification.

79-13-1002. Name.

§ 79-13-1001. Statement of qualification.

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

(1) The name of the partnership;

(2) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;

(3) If the partnership does not have an office in this state, the name and street address of the partnership's agent for service of process;

(4) A statement that the partnership elects to be a limited liability partnership; and

(5) A deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 79-13-105(d).

(f) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (c).

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

SOURCES: Laws, 2004, ch. 458, § 1001, eff from and after Jan. 1, 2005.

Cross References — Execution, filing and recording of statements, see § 79-13-105. Filing fees, see § 79-13-105.

Foreign limited liability partnerships, see §§ 79-13-1101 through 79-13-1105.

§ 79-13-1002. Name.

The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.," "L.L.P.," "RLLP" or "LLP."

SOURCES: Laws, 2004, ch. 458, § 1002, eff from and after Jan. 1, 2005.

ARTICLE 11.

FOREIGN LIMITED LIABILITY PARTNERSHIP.

SEC.

79-13-1101. Law governing foreign limited liability partnership.

79-13-1102. Statement of foreign qualification.

79-13-1103. Effect of failure to qualify.

- 79-13-1104. Activities not constituting transacting business.
 79-13-1105. Action by attorney general.

§ 79-13-1101. Law governing foreign limited liability partnership.

(a) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(c) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership.

SOURCES: Laws, 2004, ch. 458, § 1101, eff from and after Jan. 1, 2005.

§ 79-13-1102. Statement of foreign qualification.

(a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) The name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP";

(2) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(3) If there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process; and

(4) A deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 79-13-105(d).

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

SOURCES: Laws, 2004, ch. 458, § 1102, eff from and after Jan. 1, 2005.

Cross References — Execution, filing and recording of statements, see § 79-13-105. Filing fees, see § 79-13-105.

§ 79-13-1103. Effect of failure to qualify.

(a) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the Secretary of State is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

SOURCES: Laws, 2004, ch. 458, § 1103, eff from and after Jan. 1, 2005.

§ 79-13-1104. Activities not constituting transacting business.

(a) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this article include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of similar transactions; and
- (10) Transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

SOURCES: Laws, 2004, ch. 458, § 1104, eff from and after Jan. 1, 2005.

§ 79-13-1105. Action by attorney general.

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this article.

SOURCES: Laws, 2004, ch. 458, § 1105, eff from and after Jan. 1, 2005.

ARTICLE 12.

MISCELLANEOUS PROVISIONS.

SEC.

- 79-13-1201. Uniformity of application and construction.
- 79-13-1202. Short title.
- 79-13-1203. Severability clause.
- 79-13-1204. Reserved.
- 79-13-1205. Applicability.
- 79-13-1206. Savings clause.

§ 79-13-1201. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SOURCES: Laws, 2004, ch. 458, § 1201, eff from and after Jan. 1, 2005.

Comparable Laws from other States — Alabama Code, §§ 10-8A-101 through 10-8A-1109.

Arkansas Code Annotated, §§ 4-46-101 through 4-46-1207.

Florida Annotated Statutes, §§ 620.81001 through 620.9902.

Georgia Code Annotated, §§ 14-8-1 through 14-8-64.

North Carolina General Statutes, §§ 59-31 through 59-73.

South Carolina Code Annotated, §§ 33-41-10 through 33-41-1330.

Tennessee Code Annotated, §§ 61-1-101 through 61-1-1208.

Texas Annotated Statutes, Article §§ 152.001 through 152.914.

§ 79-13-1202. Short title.

This chapter may be cited as the Uniform Partnership Act (1997).

SOURCES: Laws, 2004, ch. 458, § 1202, eff from and after Jan. 1, 2005.

§ 79-13-1203. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 2004, ch. 458, § 1203, eff from and after Jan. 1, 2005.

§ 79-13-1204. Reserved.

Reserved.

SOURCES: Laws, 2004, ch. 458, § 1204, eff from and after Jan. 1, 2005.

§ 79-13-1205. Applicability.

(a) Before January 1, 2007, this chapter governs only a partnership formed:

(1) After January 1, 2005, except a partnership that is continuing the business of a dissolved partnership under the Mississippi Uniform Partnership Law in effect on December 31, 2004; and

(2) Before January 1, 2005, that elects, as provided by subsection (c), to be governed by this chapter.

(b) On and after January 1, 2007, this chapter governs all partnerships.

(c) Before January 1, 2007, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one (1) year before the partnership's election to be governed by this chapter only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

SOURCES: Laws, 2004, ch. 458, § 1205, eff from and after Jan. 1, 2005.

Editor's Note — Former §§ 79-12-1 through 79-12-119, which were repealed by Laws of 2004, ch. 458, § 1207, effective January 1, 2007, related to the Mississippi Uniform Partnership Law referred to in this section.

§ 79-13-1206. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect.

SOURCES: Laws, 2004, ch. 458, § 1208, eff from and after Jan. 1, 2005.

CHAPTER 14

Mississippi Limited Partnership Act

Article 1.	General Provisions	79-14-101
Article 2.	Formation: Certificate of Limited Partnership	79-14-201
Article 3.	Limited Partners	79-14-301
Article 4.	General Partners	79-14-401
Article 5.	Finance	79-14-501
Article 6.	Distributions and Withdrawal	79-14-601
Article 7.	Assignment of Partnership Interests	79-14-701
Article 8.	Dissolution	79-14-801
Article 9.	Foreign Limited Partnerships	79-14-901
Article 10.	Derivative Actions	79-14-1001
Article 11.	Miscellaneous	79-14-1101

ARTICLE 1.

GENERAL PROVISIONS.

SEC.

79-14-101.	Definitions.
79-14-102.	Name.
79-14-103.	Reservation of name.
79-14-104.	Office and registered agent.
79-14-105.	Records to be kept.
79-14-106.	Nature of business.
79-14-107.	Business transactions of partner with the partnership.
79-14-108.	Indemnification.

§ 79-14-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 79-14-201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission. If delivery is to the Secretary of State, delivery may be made by electronic transmission if, to the extent, and in the manner permitted by the Secretary of State.

(4) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(5) "Entity" means any association or legal entity organized to conduct business, including, without limitation, limited partnerships, for profit and nonprofit corporations, general partnerships, limited liability partnerships,

limited liability companies, joint ventures, joint stock companies and business trusts.

(6) “Event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in Section 79-14-402.

(7) “Foreign limited partnership” means a partnership formed under the laws of another state or under the laws of a foreign country or foreign jurisdiction and having as partners one or more general partners and one or more limited partners (or their equivalence under any name).

(8) “General partner” means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement or the provisions of this chapter and named in the certificate of limited partnership as a general partner.

(9) “Limited partner” means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(10) “Limited partnership” and “domestic limited partnership” mean a partnership formed by two (2) or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(11) “Organizational documents” means the basic document or documents that create or determine the internal governance of an entity.

(12) “Partner” means a limited or general partner.

(13) “Partnership agreement” means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(14) “Partnership interest” means a partner’s share of the profits and losses of a limited partnership and the right to receive distributions of limited partnership assets.

(15) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited partnership, association, joint venture, government, governmental subdivision or agency, any other legal or commercial entity, nominee or any individual or entity in any representative capacity.

(16) “Sign” or “signature” includes any manual, facsimile, conformed or electronic signature.

(17) “State” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SOURCES: Laws, 1987, ch. 488, § 101; Laws, 1997, ch. 418, § 12; Laws, 2000, ch. 469, § 40, eff from and after July 1, 2000.

Cross References — For the text of the Mississippi Uniform Partnership Law see §§ 79-13-101 et seq.

Further definition of “certificate of limited partnership”, see § 79-14-1106.

Comparable Laws from other States — Alabama Code, §§ 10-9B-101 through 10-9B-1206.

Arkansas Code Annotated, §§ 4-47-101 through 4-47-1302.

Florida Annotated Statutes, §§ 620.1101 through 620.2205.

Georgia Code Annotated, §§ 14-9-100 through 14-9-1204.

North Carolina General Statutes, §§ 59-101 through 59-1107.
 South Carolina Code Annotated, §§ 33-42-10 through 33-42-2140.
 Tennessee Code Annotated, §§ 61-2-101 through 61-2-1208.
 Texas Annotated Statutes, §§ 153.001 through 153.555.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-13-3.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-13-3.

11. In general.

Nonresident limited partners of a non-resident limited partnership doing busi-

ness in the state could not be made subject to jurisdiction of the state's courts in an action against the partnership where they had done none of the acts specified by the long arm statute (§ 13-3-57) as prerequisites to jurisdiction, and had paid their indebtedness to the partnership in full, thus, under the statute governing circumstances in which limited partners are proper parties to a suit against the partnership (§§ 79-13-3, 79-13-51[repealed]), not being subject to being made parties. *Ga-Pak Lumber Co. v. Nalley*, 337 So. 2d 1270 (Miss. 1976).

§ 79-14-102. Name.

(a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Must contain the words "limited partnership" or the abbreviation "L.P.";

(2) May not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) Except as authorized by subsection (b) of this section, must be distinguishable from (i) the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or foreign limited partnership in this state; and (ii) a corporate or partnership name reserved or registered under this chapter or the Mississippi Business Corporation Act;

(4) May not contain the following words: "bank," "banker," "bankers," "banking," "trust company," "insurance," "trust," "corporation," "incorporated," or any combination thereof, or any words of similar import.

(b) A limited partnership may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (a)(3) of this section. The Secretary of State shall authorize the use of the name applied for if:

(1) The other limited partnership or corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited partnership; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

SOURCES: Laws, 1987, ch. 488, § 102; Laws, 1990, ch. 385, § 1, eff from and after passage (approved March 13, 1990).

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq. Provision that limited partner who permits his name to be used in name of limited partnership may in some circumstances be liable to creditors of limited partnership, see § 79-14-303.

Names under which foreign limited partnerships may register prior to transacting business in this state, see § 79-14-904.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership § 789.

CJS. 68 C.J.S., Partnership § 415.

§ 79-14-103. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) A person intending to organize a limited partnership under this chapter and to adopt that name;

(2) A domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) A foreign limited partnership intending to register in this state and adopt that name; and

(4) A person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of one hundred eighty (180) days. Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty (60) days after the expiration of the last 180-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

SOURCES: Laws, 1987, ch. 488, § 103, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq. Filing fees, see § 79-14-1104.

§ 79-14-104. Office and registered agent.

(a) Each limited partnership shall have and maintain continuously in the State of Mississippi:

(1) An office, which may but need not be a place of its business in the State of Mississippi, at which shall be kept the records required by Section 79-14-105 to be maintained; and

(2) A registered agent for service of process on the limited partnership, which agent must be either an individual resident of the State of Mississippi, a domestic business corporation, or a foreign corporation authorized to do business in the State of Mississippi.

(b) A registered agent may change his address to another address in the State of Mississippi by paying a fee as set forth in Section 79-14-1104 and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the names of all the limited partnerships represented by such registered agent, and the address at which such registered agent has maintained his office for each of such limited partnerships, and further certifying to his new address which will be effective on a given day, and which new address such registered agent will thereafter maintain for each of the limited partnerships recited in the certificate. Upon the filing of such certificate, the Secretary of State will furnish to the registered agent a certified copy of the same under his hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered agent's office in the State of Mississippi of each of the limited partnerships recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. Filing of such certificate shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action with respect thereto to amend its certificate of limited partnership under Section 79-14-202. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each limited partnership affected thereby.

(c) The registered agent of one or more limited partnerships may resign his agency appointment by paying a fee as set forth in Section 79-14-1104 and filing a certificate with the Secretary of State stating that it resigns as registered agent for such limited partnerships as are identified in the certificate, but such resignation shall not become effective until ninety (90) days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, if an individual, or of the president, a vice president or the secretary thereof if a corporation, that at least thirty (30) days prior and on or about the date of the filing of said certificate, notices were sent by certified or registered mail to each limited partnership for which such registered agent is resigning as registered agent, at the principal place of business thereof within or without the State of Mississippi if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was appointed for such

limited partnership, of the resignation of such registered agent. Additionally, if the registered agent does not know of the principal place of business of the limited partnership, the registered agent shall send notice to the office of the limited partnership in the State of Mississippi as designated in subsection (a) of this section, if its address is different from that of the registered agent so resigning. After receipt of the notice of resignation of its registered agent, the limited partnership for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the limited partnership for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 1987, ch. 488, § 104, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Requirement that certificate of limited partnership set forth address of office and of registered agent, see § 79-14-201.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act (January 1, 1988), see § 79-14-1106.

§ 79-14-105. Records to be kept.

(a) Each limited partnership shall keep at the office referred to in Section 79-14-104(a)(1) the following:

(1) A current list of the full name and last known business address of each partner separately identifying in alphabetical order the general partners and the limited partners;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(3) Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the six (6) most recent years;

(4) Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the six (6) most recent years; and

(5) Unless contained in a written partnership agreement, a writing setting out:

(i) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(ii) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(iii) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(iv) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) The records specified under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

SOURCES: Laws, 1987, ch. 488, § 105, eff from and after January 1, 1988.

Cross References — Liability for false statement in certificate, see § 79-14-207.

Limited partner's right to inspect and copy the partnership records required under this section, see § 79-14-305.

Obligation of partner to contribute cash equal to that portion of value, as stated in records kept under this section, of stated contribution of property or services not made, see § 79-14-502.

Allocation of profits and losses on basis of value, as stated in records kept under this section, of contributions made by each partner, see § 79-14-503.

Distribution of cash or other assets on basis of value, as stated in records kept under this section, of contributions made by each partner, see § 79-14-504.

Extent to which partner receives return of his contribution, as determined by reference to records kept under this section, see § 79-14-608.

§ 79-14-106. Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on unless otherwise prohibited by law.

SOURCES: Laws, 1987, ch. 488, § 106, eff from and after January 1, 1988.

Cross References — State policy regarding issuance of governing licenses to limited partnerships, see § 75-76-219.

Eligibility requirements for limited partnerships to receive state gaming license, see § 75-76-221.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 774, 781. **CJS.** 68 C.J.S., Partnership §§ 416, 464.

§ 79-14-107. Business transactions of partner with the partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

SOURCES: Laws, 1987, ch. 488, § 107, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership
§ 228.

§ 79-14-108. Indemnification.

Subject to such standards and restrictions set forth in its partnership agreement, a limited partnership may, and shall have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever. However, the failure of a partnership agreement to provide or contain such standards and restrictions does not mean that a limited partnership may not, and does not have the power to, indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever.

SOURCES: Laws, 1987, ch. 488, § 108, eff from and after January 1, 1988.

ARTICLE 2.

FORMATION: CERTIFICATE OF LIMITED PARTNERSHIP.

SEC.

79-14-201.	Certificate of limited partnership.
79-14-202.	Amendment to certificate.
79-14-203.	Certificate of dissolution and cancellation.
79-14-204.	Execution of certificate.
79-14-205.	Amendments, dissolution or cancellation by judicial act.
79-14-206.	Filing in office of Secretary of State.
79-14-207.	Liability for false statement in certificate.
79-14-208.	Notice.
79-14-209.	Delivery of certificates to limited partners.
79-14-210.	Restated certificates of limited partnership.
79-14-211.	Merger and consolidation of limited partnership.

§ 79-14-201. Certificate of limited partnership.

(a) In order to form a limited partnership, a certificate of limited partnership must be signed and delivered to the office of the Secretary of State for filing. The certificate must set forth:

- (1) The name of the limited partnership;
- (2) The street and mailing address of the office and the name and the street and mailing address of the registered agent for service of process, required to be maintained by Section 79-14-104;
- (3) The name and the street and mailing address of each general partner;
- (4) The latest date upon which the limited partnership is to dissolve; and
- (5) Any other matters the general partners determine to include therein.

(b) A limited partnership is formed at the date and time of the filing of the certificate of limited partnership in the office of the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

(c) For all purposes, a copy of the certificate of limited partnership duly certified by the Secretary of State is conclusive evidence of the formation of a limited partnership and prima facie evidence of its existence.

SOURCES: Laws, 1987, ch. 488, § 201; Laws, 1997, ch. 418, § 13, eff from and after July 1, 1997.

Cross References — Incorporation of provisions of this section into definition of “certificate of limited partnership” for purposes of this chapter, see § 79-14-101.

Filing fees, see § 79-14-1104.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Legal Forms 2d,
Partnership §§ 194:1241-194:1247.

CJS. 68 C.J.S., Partnership § 408.

§ 79-14-202. Amendment to certificate.

(a) A certificate of limited partnership is amended by delivery of a certificate of amendment thereto to the office of the Secretary of State for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The future effective date of the amendment, which must be a date certain, unless it is effective upon the filing of the certificate of amendment; and
- (3) The amendment to the certificate.

(b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(c) Notwithstanding the requirements of subsection (b) of this section, within thirty (30) days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the office of the Secretary of State for filing:

- (1) The admission of a new general partner;
- (2) The withdrawal of a general partner;
- (3) The continuation of the business under Section 79-14-801 after an event of withdrawal of a general partner;
- (4) A change in the name of the limited partnership;

(5) A change in the street or mailing address of the office of the limited partnership; or

(6) A change in the name or the street or mailing address of the registered agent of the limited partnership.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) Except as provided in Section 79-14-402(b), if an amendment to a certificate of limited partnership is delivered to the office of the Secretary of State in compliance with subsection (c) of this section, no person is subject to liability because the amendment was not filed earlier.

SOURCES: Laws, 1987, ch. 488, § 202; Laws, 1997, ch. 418, § 14, eff from and after July 1, 1997.

Cross References — Execution of certificate, see § 79-14-204.

Filing of “amended and restated” and “restated” certificates of limited partnership, see § 79-14-210.

Liability, as general partner, of person who has ceased to be general partner, until amended certificate of limited partnership is filed pursuant to this section, see § 79-14-402.

Filing fees, see § 79-14-1104.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 797, 798 et seq.

CJS. 68 C.J.S., Partnership § 413.

14 Am. Jur. Legal Forms 2d, Partnership §§ 194:1245, 194:1246.

§ 79-14-203. Certificate of dissolution and cancellation.

A certificate of dissolution must be delivered to the office of the Secretary of State for filing upon the dissolution and the commencement of winding up of the limited partnership pursuant to Article 8 of this chapter or at any time when there are no limited partners. A certificate of cancellation must be delivered to the office of the Secretary of State for filing upon completion of the winding up of the affairs of the limited partnership or upon a merger or consolidation, as provided in Section 79-14-211, by a limited partnership that is not the surviving or resulting limited partnership. Certificates of dissolution and cancellation must be delivered to the office of the Secretary of State for filing and must set forth:

(1) The name of the limited partnership;

(2) The reason for delivering the certificate of dissolution or cancellation to the Secretary of State for filing;

(3) The future effective date of dissolution or cancellation, which must be a date certain, unless it is effective upon the filing of the certificate by the Secretary of State; and

(4) Any other information the general partners delivering the certificate for filing determine.

SOURCES: Laws, 1987, ch. 488, § 203; Laws, 1997, ch. 418, § 15, eff from and after July 1, 1997.

Cross References — Execution of certificate, see § 79-14-204.

Attachments to certificate of cancellation following merger or consolidation, where surviving or resulting entity is foreign limited partnership, see § 79-14-211.

Authority of persons winding up limited partnership's affairs until filing of certificate of cancellation as provided in this section, see § 79-14-803.

Filing fees, see § 79-14-1104.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Legal Forms 2d,
Partnership § 194:1247.

§ 79-14-204. Execution of certificate.

(a) Each certificate required by this article to be filed in the office of the Secretary of State must be signed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one (1) general partner and by each other general partner designated in the certificate as a new general partner; and

(3) Certificates of dissolution and cancellation must be signed by all general partners or, if there is no general partner, by the limited partners conducting the winding up of the limited partnership affairs under Section 79-14-803. A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.

(b) Any person may sign a certificate, a partnership agreement or any amendment to either by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

SOURCES: Laws, 1987, ch. 488, § 204; Laws, 1994, ch. 417, § 6; Laws, 1995, ch. 362, § 3; Laws, 1997, ch. 418, § 16, eff from and after July 1, 1997.

Cross References — Judicial relief in event that person required by this section to execute certificate fails or refuses to do so, see § 79-14-205.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

§ 79-14-205. Amendments, dissolution or cancellation by judicial act.

If a person required by Section 79-14-204 to execute a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the chancery court of the county in which the office of the limited partnership is located to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order appropriate relief, including an order to the Secretary of State to record an appropriate certificate.

SOURCES: Laws, 1987, ch. 488, § 205, eff from and after January 1, 1988.

Cross References — Liability of general partner for failure to timely file petition for amendment, dissolution, or cancellation, see § 79-14-207.

RESEARCH REFERENCES

CJS. 68 C.J.S., Partnership § 414.

§ 79-14-206. Filing in office of Secretary of State.

(a) One (1) original of a certificate of limited partnership and of any certificates of amendment, dissolution or cancellation, or of any judicial decree of amendment, dissolution or cancellation must be delivered to the office of the Secretary of State for filing. A person who signs a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing by the Secretary of State. If the Secretary of State finds that the certificate meets the requirements of this article and all filing fees required by Section 79-14-1104 have been paid, he shall:

(1) Endorse on the original the word “Filed” and the day, month and year of the filing thereof;

(2) File the original in his office; and

(3) Return a copy to the person who delivered it for filing or his representative.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment by the Secretary of State or upon the future effective date of a certificate of amendment or judicial decree thereof, as provided for therein, the certificate of limited partnership shall be amended as set forth therein. Upon the filing of a certificate of dissolution or cancellation or a judicial decree thereof by the office of the Secretary of State or upon the future effective date of a certificate of dissolution or cancellation or a judicial decree thereof, the certificate of limited partnership is dissolved or cancelled, as the case may be.

SOURCES: Laws, 1987, ch. 488, § 206; Laws, 1990, ch. 385, § 2; Laws, 1995, ch. 362, § 4; Laws, 1997, ch. 418, § 17, eff from and after July 1, 1997.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Delivery of copies of certificates to limited partners after filing pursuant to this section, see § 79-14-209.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

RESEARCH REFERENCES

CJS. 68 C.J.S., Partnership § 412.

§ 79-14-207. Liability for false statement in certificate.

(a) If a certificate of limited partnership or certificate of amendment, dissolution or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) A person who signed the certificate, or caused another to sign it on his behalf, and knew, and a general partner who knew or should have known, the statement to be false at the time the certificate was signed; and

(2) A general partner who knew or should have known after the filing of the certificate that an arrangement or other fact described in the certificate had changed, making the statement in the filed certificate inaccurate in any respect, within a reasonably sufficient time before the statements were relied upon to have enabled that general partner to amend, dissolve or cancel the certificate, or to file a petition for its amendment, dissolution or cancellation under Section 79-14-205.

(b) Except as provided in Section 79-14-402(b), no person shall have any liability for failing pursuant to subsection (a)(2) of this section to cause the amendment, dissolution or cancellation of a certificate to be filed or failing to file a petition for its amendment, dissolution or cancellation pursuant to subsection (a)(2) of this section if the certificate of amendment, certificate of dissolution, certificate of cancellation or petition is filed by the Secretary of State within thirty (30) days of when that person knew or should have known to the extent provided in subsection (a)(2) of this section that the statement in the certificate was inaccurate in any respect.

SOURCES: Laws, 1987, ch. 488, § 207; Laws, 1997, ch. 418, § 18, eff from and after July 1, 1997.

Cross References — Assignor's liability to partnership under this section, where assignee of partnership interest has become limited partner, see § 79-14-704.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership § 834.

§ 79-14-208. Notice.

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and

that a person designated therein as a general partner is a general partner, but it is not notice of any other fact.

SOURCES: Laws, 1987, ch. 488, § 208, eff from and after January 1, 1988.

§ 79-14-209. Delivery of certificates to limited partners.

Upon the return by the Secretary of State pursuant to Section 79-14-206 of a certificate marked "Filed," the general partners shall promptly deliver a copy of the certificate of limited partnership and each certificate of amendment, dissolution or cancellation to each limited partner unless the partnership agreement provides otherwise.

SOURCES: Laws, 1987, ch. 488, § 209; Laws, 1997, ch. 418, § 19, eff from and after July 1, 1997.

§ 79-14-210. Restated certificates of limited partnership.

(a) A limited partnership may, whenever desired, integrate into a single instrument all of the provisions of its certificate of limited partnership which are then in effect and operative, and it may at the same time also further amend its certificate of limited partnership by adopting a restated certificate of limited partnership.

(b) If the restated certificate of limited partnership merely restates and integrates but does not further amend the certificate of limited partnership then in effect and operative, it shall be specifically designated in its heading as a "Restated Certificate of Limited Partnership" together with such other words as the limited partnership may deem appropriate. If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership then in effect and operative, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Limited Partnership" together with such other words as the partnership may deem appropriate. Both "Amended and Restated" and "Restated" certificates of limited partnership shall be signed and delivered for filing by the Secretary of State in the same manner as are certificates of amendment pursuant to Section 79-14-202.

(c) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

SOURCES: Laws, 1987, ch. 488, § 210; Laws, 1997, ch. 418, § 20, eff from and after July 1, 1997.

Cross References — Execution of certificate, see § 79-14-204.

Filing fees, see § 79-14-1104.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

§ 79-14-211. Merger and consolidation of limited partnership.

(a) Unless otherwise provided in the certificate of limited partnership or partnership agreement, one or more domestic limited partnerships may merge or consolidate with a domestic or foreign entity pursuant to a plan of merger or consolidation.

(b) A domestic or foreign entity may be a party to the merger or consolidation, or may be created by the terms of the plan of merger or consolidation, only if:

(1) The merger or consolidation is permitted by the laws under which the entity is organized or by which it is governed; and

(2) In effecting the merger or consolidation, the entity complies with such laws and with its organizational documents.

(c) A domestic limited partnership that is not the surviving or resulting entity in the merger or consolidation shall file a certificate of cancellation, which shall have an effective date not later than the effective date of the merger or consolidation.

(d) If following a merger or consolidation of one or more domestic limited partnerships and one or more foreign entities, the surviving or resulting entity is a foreign entity, there shall be attached to the certificate of cancellation filed pursuant to Section 79-14-203 for each such domestic limited partnership a certificate executed by the surviving or resulting foreign entity, stating that the surviving or resulting foreign entity agrees that it may be served with process in the State of Mississippi in any action, suit or proceeding for the enforcement of any obligation of such domestic limited partnership, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. In the event of service hereunder upon the Secretary of State, the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate provided for in this section and any other address which the plaintiff may elect to furnish, and the Secretary of State shall notify the surviving or resulting foreign entity at all such addresses furnished by the plaintiff.

(e) Upon the effective date of any merger or consolidation effected under this section, which said effective date shall not be earlier than when any certificate of cancellation required by subsection (b) of this section shall have become effective for all purposes of the laws of the State of Mississippi, all of the rights, privileges and powers of each of the foreign or domestic entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of said foreign or domestic entities, as well as all other things and causes of action belonging to each of such foreign or domestic entities shall be vested in the surviving or resulting foreign or domestic entity, and shall thereafter be the property of the surviving or resulting foreign or domestic entity as they were of each of the foreign or domestic entities that have merged or consolidated, and the title to any real property vested by deed

or otherwise, under the laws of the State of Mississippi, in any of such foreign or domestic entities, shall not revert or be in any way impaired by reason of this chapter, but all rights of creditors and all liens upon any property of any of said foreign or domestic entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the foreign or domestic entities that have merged or consolidated shall thenceforth attach to the surviving or resulting foreign or domestic entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

SOURCES: Laws, 1987, ch. 488, § 211; Laws, 2000, ch. 469, § 41, eff from and after July 1, 2000.

Cross References — Requirement that certificate of cancellation be filed upon completion of winding up of affairs or upon merger or consolidation, see § 79-14-203.

ARTICLE 3.

LIMITED PARTNERS.

SEC.

- | | |
|------------|---|
| 79-14-301. | Admission of limited partners. |
| 79-14-302. | Classes and voting. |
| 79-14-303. | Liability to third parties. |
| 79-14-304. | Person erroneously believing himself limited partner. |
| 79-14-305. | Information. |

§ 79-14-301. Admission of limited partners.

(a) A person becomes a limited partner on the later of:

- (1) The date the original certificate of limited partnership is filed; or
- (2) The date stated in the records of the limited partnership as the date that person becomes a limited partner.

(b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) In the case of an assignee of a partnership interest, upon compliance with subsection (a) of Section 79-14-704.

SOURCES: Laws, 1987, ch. 488, § 301, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 901, 903.

CJS. 68 C.J.S., Partnership § 427.

14 Am. Jur. Legal Forms 2d, Partnership §§ 194:1191, 194:1192.

§ 79-14-302. Classes and voting.

(a) A partnership agreement may provide for classes or groups of limited partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of limited partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of limited partners.

(b) Subject to Section 79-14-303, the partnership agreement may grant to all or certain identified limited partners or a specified class or group of the limited partners the right to vote (on a per capita or any other basis) separately or with all or any class or group of the limited partners or the general partners, on any matter.

(c) A partnership agreement which grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any limited partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

SOURCES: Laws, 1987, ch. 488, § 302, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership
§§ 841-843.

§ 79-14-303. Liability to third parties.

(a) Except as provided in subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section solely by doing one or more of the following:

- (1) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or being an officer, director or shareholder of a general partner that is a corporation;
- (2) Consulting with and advising a general partner with respect to the business of the limited partnership;

(3) Acting as surety for the limited partnership or guaranteeing, endorsing or assuming one or more specific obligations of the limited partnership or providing collateral for the limited partnership;

(4) Calling, requesting, attending or participating at a meeting of the partners or the limited partners;

(5) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(6) Proposing, approving or disapproving, by voting or otherwise, one or more of the following matters:

(i) The dissolution and winding up of the limited partnership;

(ii) The sale, exchange, lease, mortgage, assignment, pledge or other transfer of or granting of a security interest in any asset or assets of the limited partnership;

(iii) The incurrence, renewal, refinancing, payment or other discharge of indebtedness by the limited partnership;

(iv) A change in the nature of the business;

(v) The admission or removal of a general partner;

(vi) The admission or removal of a limited partner;

(vii) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) An amendment to the partnership agreement or certificate of limited partnership; or

(ix) Matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) Winding up the limited partnership pursuant to Section 79-14-803;

(8) Serving on an audit committee or committee performing the functions of an audit committee; or

(9) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Section 79-14-102(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

SOURCES: Laws, 1987, ch. 488, § 303, eff from and after January 1, 1988.

Cross References — Liability of general partner who becomes limited partner as result of conversion, see § 79-13-902.

Provision that, subject to this section, voting rights may be granted to all or certain identified limited partners or to specified classes or groups, see § 79-14-302.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-13-121.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-13-121.

11. In general.

Special partner held not to become lia-

ble as a general partner because, on general partner becoming sick, he looked over the business, examined the firm's books, and stated that he expected to close out the business to pay creditors. *E.C. Cropper & Co. v. Illinois Sewing Mach. Co.*, 100 Miss. 127, 54 So. 849 (1911).

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 866, 874, 878, 879.

14 Am. Jur. Legal Forms 2d, Partnership §§ 194:1101, 194:1102.

19 Am. Jur. Pl & Pr Forms (Rev), Partnership, Form 349.

CJS. 68 C.J.S., Partnership §§ 429 et seq.

§ 79-14-304. Person erroneously believing himself limited partner.

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of State a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show that he is not a general partner; but in either case only if the third party believed in good faith that the person was a general partner at the time of the transaction.

SOURCES: Laws, 1987, ch. 488, § 304, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 884, 885.

CJS. 68 C.J.S., Partnership § 432.

§ 79-14-305. Information.

(a) Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by Section 79-14-105; and

(2) Subject to such reasonable standards as may be set forth in writing in the partnership agreement, obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest as a limited partner:

(i) True and full information regarding the state of the business and financial condition of the limited partnership;

(ii) Promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(iii) Other information regarding the affairs of the limited partnership as is just and reasonable.

(b) In addition to any other remedies, a court of competent jurisdiction may enforce the duty of making available the information and financial statements required by this section.

(c) In any action under this section, if the court finds that the limited partnership has failed to comply with the requirements of this section, the court may award an amount sufficient to reimburse the partners bringing the action for the reasonable expenses incurred by the partners, including attorneys' fees, in connection with the action or proceeding.

(d) Any waiver by a partner of the rights provided in this section shall be unenforceable.

SOURCES: Laws, 1987, ch. 488, § 305, eff from and after January 1, 1988.

JUDICIAL DECISIONS

1. Accounting.

Statute providing that limited partner was to have right to accounting on same basis as general partner, "whenever circumstances render it just and reason-

able," did not create absolute right to accounting. *Wholey v. Cal-Maine Foods, Inc.*, 700 So. 2d 291 (Miss. 1997), reh'g denied, 702 So. 2d 133 (Miss. 1997).

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services provided by paralegals or the like as com-

pensable element of award in state court. 73 A.L.R.4th 938.

ARTICLE 4.

GENERAL PARTNERS.

SEC.

- 79-14-401. Admission of additional general partners.
- 79-14-402. Events of withdrawal.
- 79-14-403. General powers and liabilities.
- 79-14-404. Contributions by a general partner.
- 79-14-405. Classes and voting.

§ 79-14-401. Admission of additional general partners.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the specific written consent of each partner.

SOURCES: Laws, 1987, ch. 488, § 401, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 817, 818. **CJS.** 68 C.J.S., Partnership § 427.
14 Am. Jur. Legal Forms 2d, Partnership §§ 194:1191 et seq.

§ 79-14-402. Events of withdrawal.

(a) Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the occurrence of one or more of the following events:

- (1) The general partner withdraws from the limited partnership as provided in Section 79-14-602(a);
- (2) The general partner ceases to be a member of the limited partnership as provided in Section 79-14-702;
- (3) The general partner is removed as a general partner in accordance with the partnership agreement;
- (4) Unless otherwise provided in writing in the partnership agreement, the general partner:
 - (i) Makes an assignment for the benefit of creditors;
 - (ii) Files a voluntary petition in bankruptcy;
 - (iii) Is adjudicated a bankrupt or insolvent or has entered against him an order for relief in any bankruptcy or insolvency proceeding;
 - (iv) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(v) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(vi) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

(5) Unless otherwise provided in writing in the partnership agreement, one hundred twenty (120) days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is an individual,

(i) His death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the issuance of a certificate or decree of its dissolution, or its equivalent, or the revocation of its charter, or

(10) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

(b) Notwithstanding the provisions of subsection (a) of this section, a person who ceases to be a general partner of a limited partnership shall be deemed to be a general partner with respect to a third party doing business with the limited partnership who reasonably believes such person continues to be a general partner, until an amended certificate of limited partnership is filed with the Secretary of State pursuant to Section 79-14-202.

SOURCES: Laws, 1987, ch. 488, § 402, eff from and after January 1, 1988.

Cross References — Incorporation of provisions of this section into definition of "event of withdrawal of a general partner" for purposes of this chapter, see § 79-14-101.

Provision that no person shall be liable, except as provided in this section, where an amendment to a certificate of limited partnership or other document is filed within 30 days of event necessitating it, see §§ 79-14-202 and 79-14-207.

Effects of withdrawal of general partner, see § 79-14-602.

Assignor's liability to partnership under this section, where assignee of partnership interest has become limited partner, see § 79-14-704.

§ 79-14-403. General powers and liabilities.

(a) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the limited partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the limited partnership and to the other partners.

SOURCES: Laws, 1987, ch. 488, § 403, eff from and after January 1, 1988.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-117.

11. Validity of partnership.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-3-117.

11. Validity of partnership.

Where a husband and wife created a limited partnership valid under this sec-

tion [Code 1942, § 5560] for the conduct of their business and each reported income as their share of profits as set forth in a written agreement, this partnership was valid for income tax purposes despite the fact that wife exercised no management or control and that the parties did not equally draw cash for personal use. *Marcus v. Commissioner*, 201 F.2d 850 (5th Cir. 1953).

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 841 et seq.

CJS. 68 C.J.S., Partnership §§ 423, 477.

§ 79-14-404. Contributions by a general partner.

A general partner of a limited partnership may make contributions to the limited partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the limited partnership as a limited partner.

SOURCES: Laws, 1987, ch. 488, § 404, eff from and after January 1, 1988.

Cross References — Powers of general partner, see § 79-14-403.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 841 et seq.

14 Am. Jur. Legal Forms 2d, Partnership §§ 194:1071-194:1073.

CJS. 68 C.J.S., Partnership § 426.

§ 79-14-405. Classes and voting.

(a) The partnership agreement may provide for classes or groups of general partners having such relative rights, powers and duties as the partnership agreement may provide, and may make provisions for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of general partners.

(b) The partnership agreement may grant to all or certain identified general partners or a specified class or group of the general partners the right to vote (on a per capita or any other basis), separately or with all or any class or group of the limited partners or the general partners, on any matter.

(c) A partnership agreement which grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any general partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

SOURCES: Laws, 1987, ch. 488, § 405, eff from and after January 1, 1988.

ARTICLE 5.

FINANCE.

SEC.

79-14-501. Form of contribution.

79-14-502. Liability for contributions.

79-14-503. Sharing of profits and losses.

79-14-504. Sharing of distributions.

§ 79-14-501. Form of contribution.

The contribution of a partner may be in cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

SOURCES: Laws, 1987, ch. 488, § 501, eff from and after January 1, 1988.

Cross References — Liability of assignees and assignors of partnership interests with respect to making and returning contributions, inter alia, see § 79-14-704.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership

§§ 868 et seq.

CJS. 68 C.J.S., Partnership § 409.

§ 79-14-502. Liability for contributions.

(a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform an enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to Section 79-14-105, of the stated contribution that has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by specific consent of all the partners. But, a creditor of a limited partnership who extends credit, or otherwise acts in reliance on that obligation after the partner signs a writing that reflects the obligation and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation to the same extent as the partnership could pursuant to this section.

(d) A partnership agreement may provide that the interest of any partner who fails to make any contribution that he is obligated to make, shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing the defaulting partner's proportionate interest in the limited partnership, subordinating his partnership interest to that of nondefaulting partners, forcing a sale of his partnership interest, forfeiting his partnership interest, the lending by other partners of the amount necessary to meet his commitment, fixing the value of his partnership interest by appraisal or by formula and redeeming or selling of his partnership interest at such value, or other penalty or consequence.

SOURCES: Laws, 1987, ch. 488, § 502, eff from and after January 1, 1988.

Cross References — Liability of assignees and assignors of partnership interests with respect to making and returning contributions, *inter alia*, see § 79-14-704.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 79-29-502(1) and Miss. Code Ann. § 79-14-502(a) are similar and both statutes deal with the statute of frauds. However, that was not the issue on appeal, where a minority member never promised to contribute to the limited liability company (LLC) in writing or

otherwise; the subject of the dispute, a capital call, was not an obligation but a choice, and the minority member's financial interest was properly reduced as a result of the other members' capital contributions in a valid call for the raising of additional equity. *KBL Props., LLC v. Bellin*, 900 So. 2d 1160 (Miss. 2005).

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Legal Forms 2d, Partnership § 194:1071 (contribution to partnership-of limited partner).

§ 79-14-503. Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses must be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 79-14-105, of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

SOURCES: Laws, 1987, ch. 488, § 503, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 836 et seq.

14 Am. Jur. Legal Forms 2d, Partnership §§ 194:1141-194:1146.

§ 79-14-504. Sharing of distributions.

Distributions of cash or other assets of a limited partnership must be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions must be made on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 79-14-105, of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

SOURCES: Laws, 1987, ch. 488, § 504, eff from and after January 1, 1988.

ARTICLE 6.

DISTRIBUTIONS AND WITHDRAWAL.

SEC.

- 79-14-601. Interim distributions.
- 79-14-602. Withdrawal of general partner.
- 79-14-603. Withdrawal of limited partner.
- 79-14-604. Distribution upon withdrawal.
- 79-14-605. Distribution in kind.
- 79-14-606. Right to distribution.
- 79-14-607. Limitations on distribution.
- 79-14-608. Liability upon return of contribution.

§ 79-14-601. Interim distributions.

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof, to the extent and at the times or upon the occurrence of the events specified in the partnership agreement.

SOURCES: Laws, 1987, ch. 488, § 601, eff from and after January 1, 1988.

Cross References — Liability of assignees and assignors of partnership interests with respect to making and returning contributions, inter alia, see § 79-14-704.

Satisfaction, upon winding up of limited partnership, of liabilities to for distributions to partners under this section or § 79-14-604, see § 79-14-804.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Legal Forms 2d,
Partnership §§ 194:1141-194:1146.

§ 79-14-602. Withdrawal of general partner.

(a) A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners. If a general partner withdraws pursuant to Section 79-14-402(a)(1) or 79-14-402(a)(2) and such withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and, in addition to any other remedies, shall have the right to offset the damages against the amount otherwise distributable to the general partner. Unless otherwise provided in writing in the partnership agreement, in the case of a limited partnership for a fixed term, a withdrawal by a general partner pursuant to Section 79-14-402(a)(1) or 79-14-402(a)(2) prior to the expiration of that term is a breach of the partnership agreement.

(b) Unless otherwise provided in the partnership agreement, and subject to the liability created under subsection (a) of this section, a general partner who ceases to be a general partner under Section 79-14-402 shall:

(1) Retain the same interest in that partner's capital account, profits, losses and distributions, but that interest shall be that of a limited partner;

(2) Not be personally liable for limited partnership debts incurred after the person ceases to be a general partner, other than any debts incurred by reason of that person's being deemed to be acting as a general partner, pursuant to Section 79-14-402;

(3) Be entitled to vote as a limited partner on all matters except the admission and compensation of a general partner; and

(4) Have the partner's interest in profits, losses and distributions reduced pro rata with all other partners to provide compensation, or an interest in the limited partnership, or both, to a new general partner.

SOURCES: Laws, 1987, ch. 488, § 602; Laws, 1990, ch. 385, § 3, eff from and after passage (approved March 13, 1990).

Cross References — Provision that person ceases to be general partner upon withdrawing from limited partnership under subsection (a) of this section, see § 79-14-402.

§ 79-14-603. Withdrawal of limited partner.

[For domestic limited partnerships formed on or before June 30, 1998, and which do not duly elect to become subject to the second tier of this section, this section shall read as follows:]

A limited partner may withdraw from a limited partnership at the time or upon the occurrence of events specified in writing in the partnership agreement. If the partnership agreement does not specify in writing the time or the events upon the occurrence of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six (6) months' written notice to each general partner at his address set forth in the certificate.

[For domestic limited partnerships formed on or after July 1, 1998, or which elect, in accordance with any provision of its partnership agreement permitting it to do so or by duly amending the partnership agreement to become subject to the following provisions by filing with the Secretary of State at any time after May 1, 1998, a certificate of amendment that would cause its certificate of limited partnership to comply with the following provisions, specifically stating that the limited partnership is electing to adopt the following provisions, this section shall read as follows:]

A limited partner may withdraw from a limited partnership at the time or upon the occurrence of events specified in writing in the partnership agreement.

SOURCES: Laws, 1987, ch. 488, § 603; Laws, 1998, ch. 376, § 2, eff from and after July 1, 1998.

§ 79-14-604. Distribution upon withdrawal.

[For domestic limited partnerships formed on or before June 30, 1998, and which do not duly elect to become subject to the second tier of this section, this section shall read as follows:]

Except as provided in this article, upon withdrawal any withdrawing limited partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, the limited partner is entitled to receive, within a reasonable time after the withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

[For domestic limited partnerships formed on or after July 1, 1998, or which elect, in accordance with any provision of its partnership agreement permitting it to do so or by duly amending the partnership agreement to become subject to the following provisions by filing with the Secretary of State at any time after May 1, 1998, a certificate of amendment that would cause its certificate of limited partnership to comply with the following provisions, specifically stating that the limited partnership is electing to adopt the following provisions, this section shall read as follows:]

Subject to contrary provisions in the partnership agreement, a withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value as of the date of withdrawal of the interest in the limited partnership with respect to which the withdrawal has occurred.

SOURCES: Laws, 1987, ch. 488, § 604; Laws, 1998, ch. 376, § 3, eff from and after July 1, 1998.

Cross References — Satisfaction, upon winding up of limited partnership, of liabilities to for distributions to partners under this section or § 79-14-601, see § 79-14-804.

§ 79-14-605. Distribution in kind.

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

SOURCES: Laws, 1987, ch. 488, § 605, eff from and after January 1, 1988.

§ 79-14-606. Right to distribution.

Subject to Sections 79-14-607 and 79-14-804, at the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

SOURCES: Laws, 1987, ch. 488, § 606, eff from and after January 1, 1988.

§ 79-14-607. Limitations on distribution.

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities as to which recourse of creditors is limited to specific property of the limited partnership, exceed the fair value of the limited partnership assets, provided that the fair value of any property that is subject to a liability as to which recourse of creditors is so limited shall be included in the limited partnership assets only to the extent that the fair value of the property exceeds this liability.

SOURCES: Laws, 1987, ch. 488, § 607, eff from and after January 1, 1988.

Cross References — Partner's entitlement to remedies available to creditor of limited partnership, when he becomes entitled to distribution, subject to this section and § 79-14-804, see § 79-14-606.

§ 79-14-608. Liability upon return of contribution.

(a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of one (1) year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities which were in existence at the date of receipt of the return of contribution and have not been subsequently discharged.

(b) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, he is liable to the limited partnership for a period of six (6) years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the limited partnership records required to be kept pursuant to Section 79-14-105, of his contribution which has not been distributed to him.

SOURCES: Laws, 1987, ch. 488, § 608, eff from and after January 1, 1988.

Cross References — Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

ARTICLE 7.

ASSIGNMENT OF PARTNERSHIP INTERESTS.

SEC.

- 79-14-701. Nature of partnership interest.
- 79-14-702. Assignment of partnership interest.
- 79-14-703. Rights of creditor.
- 79-14-704. Right of assignee to become limited partner.
- 79-14-705. Power of estate of deceased or incompetent partner.

§ 79-14-701. Nature of partnership interest.

A partnership interest is personal property. A partner has no interest in specific limited partnership property.

SOURCES: Laws, 1987, ch. 488, § 701, eff from and after January 1, 1988.

§ 79-14-702. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee, to the extent assigned, to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, credit or similar item to which the assignor would have been entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

SOURCES: Laws, 1987, ch. 488, § 702, eff from and after January 1, 1988.

Cross References — Provision that person ceases to be general partner when he ceases to be member of limited partnership pursuant to this section, see § 79-14-402.

Sale, assignment or other disposition or other disposition of any interest in limited partnership that holds state gaming license, see § 75-76-223.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership 14 Am. Jur. Legal Forms 2d, Partnership §§ 819, 820 et seq. ship §§ 194:1121-194:1124.

§ 79-14-703. Rights of creditor.

On application to a court of competent jurisdiction by a judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment, with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

SOURCES: Laws, 1987, ch. 488, § 703, eff from and after January 1, 1988.

JUDICIAL DECISIONS

I. Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-13-37.

11. In general.

I. Current Law.

1.-10. [Reserved for future use.]

II. Under Former § 79-13-37.

11. In general.

The trial court properly revoked its order directing the sale of a debtor's 47

percent interest in partnerships, where individuals received a 99.7 percent interest in the partnerships before a writ of fieri facias was served on the debtor, which transfer of ownership effectively cut off a creditor bank's ability to reach the 47 percent interest in the partnership previously owned by the debtor. *Grenada Bank v. Willey*, 694 F.2d 85 (5th Cir. 1982), reh'g denied, 697 F.2d 1092 (5th Cir. 1983), cert. denied, 462 U.S. 1123, 103 S. Ct. 3097, 77 L. Ed. 2d 1355 (1983).

RESEARCH REFERENCES

CJS. 68 C.J.S., Partnership § 436.

§ 79-14-704. Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the partnership agreement so provides, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Articles 5 and 6. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the partnership agreement kept pursuant to Section 79-14-105.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 79-14-207 and 79-14-402 and Articles 5 and 6 of this chapter.

SOURCES: Laws, 1987, ch. 488, § 704, eff from and after January 1, 1988.

Cross References — Admission of assignee of partnership interest as additional limited partner, see § 79-14-301.

Applicability of this section to limited partnerships formed prior to the effective date of the Mississippi Limited Partnership Act, see § 79-14-1106.

§ 79-14-705. Power of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

SOURCES: Laws, 1987, ch. 488, § 705, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 14 Am. Jur. Legal Forms 2d,
Partnership §§ 194:1201-194:1204.

ARTICLE 8.

DISSOLUTION.

SEC.

- 79-14-801. Nonjudicial dissolution.
- 79-14-802. Judicial dissolution.
- 79-14-803. Winding up.
- 79-14-804. Distribution of assets.

§ 79-14-801. Nonjudicial dissolution.

A limited partnership is dissolved and its affairs must be wound up upon the first of the following to occur:

- (1) At the time specified in the certificate of limited partnership;
- (2) Upon the occurrence of the events specified in writing in the partnership agreement;
- (3) Upon written consent of all partners, or such lesser number as may be provided in the partnership agreement;
- (4) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of an event of withdrawal of a general partner if, within ninety (90) days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (5) Upon the entry of a decree of judicial dissolution under Section 79-14-802.

SOURCES: Laws, 1987, ch. 488, § 801, eff from and after January 1, 1988.

Cross References — Requirement that amendment to certificate of limited partnership be filed to reflect continuation of business under this section after event of withdrawal of general partner, see § 79-14-202.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership §§ 910 et seq. **CJS.** 68 C.J.S., Partnership § 440.
14 Am. Jur. Legal Forms 2d, Partnership § 194:1221.

§ 79-14-802. Judicial dissolution.

On application by or for a partner the chancery court for the county in which the office of the limited partnership is located may decree dissolution of a limited partnership whenever any of the following occurs:

(a) It is not reasonably practicable to carry on the business in conformity with the partnership agreement; or

(b) The general partners have been guilty of or have knowingly countenanced persistent and pervasive fraud or abuse of authority or persistent unfairness toward any partner, or the property of the limited partnership is being misapplied or wasted by the general partners.

SOURCES: Laws, 1987, ch. 488, § 802, eff from and after January 1, 1988.

Cross References — Chancery courts generally, see §§ 9-5-1 et seq.

Provision that limited partnership is dissolved and its affairs must be wound up upon entry of decree of judicial dissolution under this section, see § 79-14-801.

RESEARCH REFERENCES

ALR. Inability of partnership to operate at profit as justification for court-ordered dissolution. 20 A.L.R.4th 122. **Am Jur.** 19 Am. Jur. Pl & Pr Forms (Rev), Partnership, Form 342.
CJS. 68 C.J.S., Partnership § 441.

§ 79-14-803. Winding up.

(a) Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the chancery court, upon cause shown, may wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee or receiver.

(b) Upon dissolution of a limited partnership and until the filing of a certificate of cancellation as provided in Section 79-14-203, the persons winding up the limited partnership's affairs may, in the name of, and for and on behalf of, the limited partnership prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited partnership's

business, dispose of and convey the limited partnership's property, discharge the limited partnership's liabilities, and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of the limited partners.

(c) Unless otherwise provided in the partnership agreement, the limited partners winding up the affairs of the limited partnership pursuant to this section shall be entitled to reasonable compensation.

SOURCES: Laws, 1987, ch. 488, § 803, eff from and after January 1, 1988.

Cross References — Chancery courts generally, see §§ 9-5-1 et seq.

Requirement that certificates of dissolution and cancellation be signed by general or limited partners conducting winding up of affairs under this section, see § 79-14-204.

Provision that limited partner who winds up limited partnership does not thereby participate in control of business for purposes of provisions as to liability to third parties, see § 79-14-303.

Distribution of assets, see § 79-14-804.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership § 913. **CJS.** 68 C.J.S., Partnership § 440.

14 Am. Jur. Legal Forms 2d, Partnership §§ 194:1222, 194:1223.

§ 79-14-804. Distribution of assets.

Upon the winding up of a limited partnership, the assets must be distributed as follows:

(1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership (whether by payment or by establishment of reserves) other than liabilities for distributions to partners under Section 79-14-601 or 79-14-604;

(2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 79-14-601 or 79-14-604; and

(3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

SOURCES: Laws, 1987, ch. 488, § 804, eff from and after January 1, 1988.

Cross References — Partner's entitlement to remedies available to creditor of limited partnership, when he becomes entitled to distribution, subject to this section and § 79-14-607, see § 79-14-606.

ARTICLE 9.

FOREIGN LIMITED PARTNERSHIPS.

SEC.

79-14-901.	Law governing.
79-14-902.	Registration.
79-14-903.	Issuance of registration.
79-14-904.	Name.
79-14-905.	Changes and amendments.
79-14-906.	Cancellation of registration.
79-14-907.	Transaction of business without registration.
79-14-908.	Action by Attorney General.
79-14-909.	Signatures in documents.

§ 79-14-901. Law governing.

Subject to the Constitution of this state, (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

SOURCES: Laws, 1987, ch. 488, § 901, eff from and after January 1, 1988.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnership
§§ 914, 915.

§ 79-14-902. Registration.

Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall deliver to the office of the Secretary of State for filing one (1) original of an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) The state and date of its formation;

(3) The name and street and mailing address of any registered agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the registered agent must be an individual resident of this state, a domestic corporation or a foreign corporation having a place of business in and authorized to do business in this state;

(4) A statement that the Secretary of State is appointed the registered agent of the foreign limited partnership for service of process if no registered agent has been appointed under paragraph (3) of this section or, if appointed,

the registered agent's authority has been revoked or if the registered agent cannot be found or served with the exercise of reasonable diligence;

(5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, the address of the principal office of the foreign limited partnership;

(6) The name and mailing and street address of each general partner; and

(7) The mailing and street address of the office at which is kept a list of the names and addresses of the limited partners and their contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is cancelled.

SOURCES: Laws, 1987, ch. 488, § 902; Laws, 1990, ch. 385, § 4; Laws, 1995, ch. 362, § 5; Laws, 1997, ch. 418, § 21, eff from and after July 1, 1997.

Cross References — Filing fees, see § 79-14-1104.

§ 79-14-903. Issuance of registration.

If the Secretary of State finds that an application for registration meets the requirements of this article and all requisite fees as provided in Section 79-14-1104 have been paid, he shall:

(1) Endorse on the original the word "Filed" and the month, day and year of the filing thereof;

(2) File in his office the original of the application; and

(3) Return a copy to the person who delivered it for filing or his representative.

SOURCES: Laws, 1987, ch. 488, § 903; Laws, 1990, ch. 385, § 5; Laws, 1995, ch. 362, § 6; Laws, 1997, ch. 418, § 22, eff from and after July 1, 1997.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

§ 79-14-904. Name.

A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes the words "limited partnership" or the abbreviation "L.P." and that could be registered by a domestic limited partnership.

SOURCES: Laws, 1987, ch. 488, § 904, eff from and after January 1, 1988.

Cross References — Name requirements applicable to limited partnerships generally, see § 79-14-102.

§ 79-14-905. Changes and amendments.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly deliver to the office of the Secretary of State for filing a certificate, signed by a general partner, correcting such statement, together with a fee as set forth in Section 79-14-1104.

SOURCES: Laws, 1987, ch. 488, § 905; Laws, 1995, ch. 362, § 7; Laws, 1997, ch. 418, § 23, eff from and after July 1, 1997.

§ 79-14-906. Cancellation of registration.

A foreign limited partnership may cancel its registration by delivering to the office of the Secretary of State for filing a certificate of cancellation signed by a general partner or such other person as may be authorized to do so under the laws of the state under which the foreign limited partnership is organized. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in this state.

SOURCES: Laws, 1987, ch. 488, § 906; Laws, 1995, ch. 362, § 8; Laws, 1997, ch. 418, § 24, eff from and after July 1, 1997.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.
Filing fees, see § 79-14-1104.

§ 79-14-907. Transaction of business without registration.

(a) A foreign limited partnership transacting business in this state may not maintain any action, suit or proceeding in any court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit or proceeding in any court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership having transacted business in this state without registration.

(d) By transacting business in this state without registration, a foreign limited partnership appoints the Secretary of State as its registered agent for service of process with respect to causes of action arising out of the transaction of business in this state.

SOURCES: Laws, 1987, ch. 488, § 907, eff from and after January 1, 1988.

JUDICIAL DECISIONS

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former §§ 79-13-213.

11. In general.

I. Under Current Law.

1.-10. [Reserved for future use.]

II. Under Former §§ 79-13-213.

11. In general.

In an action by a foreign limited partnership alleging breach of contract and misrepresentation in the purchase of real property against a Mississippi defendant, plaintiff's action was not barred on the ground that it accrued prior to the partnership's registration to do business in the state, since, upon proper registration, plaintiff could maintain suit in state courts whether the cause of action accrued prior to or subsequent to registration; evidence was sufficient to establish that plaintiff was "doing business" in Mississippi within the meaning of § 79-13-213, where the pleadings established that plaintiff negotiated the purchase of a par-

cel of real property, executed a promissory note and deed of trust to secure payment for the property, made a number of repairs on the property, and leased the property through its realtor for a period of one year, and where plaintiff presented no evidence challenging the fact that it was doing business in this state prior to registration. *MISS CAL 204, Ltd. v. Upchurch*, 465 So. 2d 326 (Miss. 1985).

Foreign limited partnership may not maintain cause of action in Mississippi courts until it has properly registered; upon proper registration, it may maintain suit whether cause of action accrued prior to or subsequent to registration. *MISS CAL 204, Ltd. v. Upchurch*, 465 So. 2d 326 (Miss. 1985).

Foreign limited partnership which negotiates purchase of parcel of real property in Mississippi, executes promissory note and deed of trust to secure payment for property, makes number of repairs on property, and leases property, through realtor, is transacting business in state within meaning of § 79-13-213. *MISS CAL 204, Ltd. v. Upchurch*, 465 So. 2d 326 (Miss. 1985).

§ 79-14-908. Action by Attorney General.

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

SOURCES: Laws, 1987, ch. 488, § 908, eff from and after January 1, 1988.

Cross References — Attorney General generally, see §§ 7-5-1 et seq.

§ 79-14-909. Signatures in documents.

A document required or permitted to be filed under this chapter which contains a copy of a signature, however made, is acceptable for filing.

SOURCES: Laws, 1995, ch. 362, § 9, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnerships
§§ 795, 799, 801.

ARTICLE 10.

DERIVATIVE ACTIONS.

SEC.

- 79-14-1001. Right of action.
- 79-14-1002. Proper plaintiff.
- 79-14-1003. Pleading.
- 79-14-1004. Expenses.

§ 79-14-1001. Right of action.

A limited partner may maintain an action in the right of a limited partnership to recover a judgment or obtain other relief in its favor if general partners with authority to do so have refused to bring the action or an effort to cause those general partners to bring the action is not likely to succeed.

SOURCES: Laws, 1987, ch. 488, § 1001, eff from and after January 1, 1988.

RESEARCH REFERENCES

ALR. Right of limited partner to maintain derivative action on behalf of partnership. 26 A.L.R.4th 264.

§ 79-14-1002. Proper plaintiff.

In a derivative action the plaintiff must be a partner at the time of bringing the action and (i) must have been a partner at the time of the transaction of which he complains, or (ii) his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

SOURCES: Laws, 1987, ch. 488, § 1002, eff from and after January 1, 1988.

§ 79-14-1003. Pleading.

In a derivative action the complaint shall set forth with particularity the effort of the plaintiff to secure commencement of the action by a general partner or the reasons for not making the effort.

SOURCES: Laws, 1987, ch. 488, § 1003, eff from and after January 1, 1988.

§ 79-14-1004. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him. If those

proceeds are insufficient to reimburse plaintiff's reasonable expenses, the court may direct that any such award of plaintiff's expenses, or a portion thereof, be paid by the limited partnership.

SOURCES: Laws, 1987, ch. 488, § 1004, eff from and after January 1, 1988.

RESEARCH REFERENCES

ALR. Attorneys' fees: cost of services pensable element of award in state court.
provided by paralegals or the like as com- 73 A.L.R.4th 938.

ARTICLE 11.

MISCELLANEOUS.

SEC.

- 79-14-1101. Construction and application.
- 79-14-1102. Short title.
- 79-14-1103. Severability.
- 79-14-1104. Fees.
- 79-14-1105. Repeals.
- 79-14-1106. Status of partnerships formed prior to effective date of Limited Partnership Act; transitional rules; savings clause.
- 79-14-1107. Rules for cases not provided for in this chapter.

§ 79-14-1101. Construction and application.

This chapter shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SOURCES: Laws, 1987, ch. 488, § 1101, eff from and after January 1, 1988. *

§ 79-14-1102. Short title.

This chapter may be cited as the Mississippi Limited Partnership Act.

SOURCES: Laws, 1987, ch. 488, § 1102, eff from and after January 1, 1988.

§ 79-14-1103. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 1987, ch. 488, § 1103, eff from and after January 1, 1988.

§ 79-14-1104. Fees.

Pursuant to this chapter, the Secretary of State shall charge and collect a fee for:

(a) Filing of Reservation of Partnership Name	\$25.00
(b) Filing of Change of Address of Registered Agent	25.00
(c) Filing of Resignation of Registered Agent	5.00
(d) Filing of Certificate of Limited Partnership	50.00
(e) Filing of Amendment to Certificate of Limited Partnership ...	50.00
(f) Filing of Certificate of Dissolution	25.00
(g) Filing of Certificate of Cancellation	25.00
(h) Filing of Restated Certificate of Limited Partnership or Amended and Restated Certificate of Limited Partnership.....	25.00
(i) Filing of Certificate of Withdrawal	25.00
(j) Filing of Application for Registration of Foreign Limited Partnership	250.00
(k) Filing of Certificate Correcting Application for Registration of Foreign Limited Partnership	50.00
(l) Filing of Certificate of Cancellation of Registration of Foreign Limited Partnership	25.00

SOURCES: Laws, 1987, ch. 488, § 1104, eff from and after January 1, 1988.

Cross References — Secretary of State generally, see §§ 7-3-1 et seq.

Fees for change of address or resignation of agency appointment by registered agent of limited partnership, see § 79-14-104.

Filing of certificates relative to limited partnerships upon receipt of fees required under this section, see § 79-14-206.

Requirement that all fees be paid before issuance of certificate of registration to foreign limited partnership, see § 79-14-903.

Requirement that foreign limited partnership pay fee when filing certificate correcting its application for registration, see § 79-14-905.

§ 79-14-1105. Repeals.

Sections 79-13-1, 79-13-3, 79-13-5, 79-13-7, 79-13-9, 79-13-11, 79-13-13, 79-13-15, 79-13-17, 79-13-19, 79-13-21, 79-13-23, 79-13-25, 79-13-27, 79-13-29, 79-13-31, 79-13-33, 79-13-35, 79-13-37, 79-13-39, 79-13-41, 79-13-43, 79-13-45, 79-13-47, 79-13-49, 79-13-51, 79-13-53, 79-13-55, 79-13-57, 79-13-101, 79-13-103, 79-13-105, 79-13-107, 79-13-109, 79-13-111, 79-13-113, 79-13-115, 79-13-117, 79-13-119, 79-13-121, 79-13-123, 79-13-125, 79-13-127, 79-13-129, 79-13-131, 79-13-133, 79-13-135, 79-13-137, 79-13-201, 79-13-203, 79-13-205, 79-13-207, 79-13-209, 79-13-211, 79-13-213, 79-13-215 and 79-13-217, Mississippi Code of 1972, which govern limited partnerships, limited partnerships under prior laws and foreign limited partnerships, are hereby repealed.

SOURCES: Laws, 1987, ch. 488, § 1105, eff from and after January 1, 1988.

§ 79-14-1106. Status of partnerships formed prior to effective date of Limited Partnership Act; transitional rules; savings clause.

(a) A limited partnership formed under any other statute of this state and in existence on January 1, 1988, shall not dissolve and its legal existence shall not cease as a result of the repeal of the statute under which it was formed or the enactment of this chapter. A limited partnership formed under any other statute of this state and in existence on January 1, 1988, and the partners thereof shall be governed by the provisions of this chapter and an existing limited partnership and its partners shall have the same rights and be subject to the same limitations, restrictions and liabilities as a limited partnership formed under this chapter and its partners, except as follows:

(1) The partners of an existing limited partnership shall not be required to execute and file a certificate of limited partnership under this chapter in order to maintain the continued existence of the limited partnership as a limited partnership under the laws of this state; and, as used in this chapter with respect to an existing limited partnership, unless the context otherwise requires, "certificate of limited partnership" means the certificate of limited partnership of the limited partnership executed and filed pursuant to and in accordance with the provisions of the statute under which such limited partnership was formed, and the certificate as amended or restated.

(2) An existing limited partnership shall not be subject to the provisions of paragraphs (1), (3) or (4) of Section 79-14-102 with respect to its name as set forth in its certificate of limited partnership on January 1, 1988, but it shall become subject to such provisions if, and at the time, any change in its name is made after January 1, 1988.

(3) An existing limited partnership shall not be subject to the provisions of Section 79-14-104(a)(2) until the execution and filing of the restated certificate of limited partnership referred to in paragraph (5) of this subsection, at which time the general partners of an existing limited partnership shall have the obligation, and the right and power, to appoint and thereafter continuously maintain an agent for service of process as required by Section 79-14-104(a)(2), notwithstanding any provision contained in the partnership agreement to the contrary.

(4) The provisions of this chapter relating to the events requiring, and the method of effecting, an amendment of a certificate of limited partnership or a certificate of dissolution or cancellation shall apply to an existing limited partnership to the same extent and in the same way such provisions apply to a limited partnership formed under this chapter; except that the first amendment of the certificate of limited partnership of an existing limited partnership made after January 1, 1988, shall be effected by the execution and filing of a restated certificate of limited partnership setting forth all of the information specified in Section 79-14-201(a), including, but not limited to, the name and address of the agent for service of process required to be maintained by Section 79-14-104(a)(2), which information shall be current

as of the date of the execution and filing of such restated certificate of limited partnership; and the execution and filing of such restated certificate of limited partnership shall not result in the dissolution, or in any way adversely affect the continued existence, of the existing limited partnership.

(5) A certificate of amendment, a restated certificate of limited partnership, and a certificate of dissolution or cancellation with respect to an existing limited partnership, in addition to setting forth the information specified in Sections 79-14-202(a), 79-14-210 and 79-14-203, shall state the place where the original certificate of limited partnership was filed.

(6) Sections 79-14-501, 79-14-502 and 79-14-608 apply only to contributions and distributions made after January 1, 1988.

(7) Section 79-14-704 applies only to assignments made after January 1, 1988.

(b) From and after January 1, 1988, (i) all amendments to and restatements of the certificate of limited partnership or certificate of dissolution or cancellation of an existing limited partnership shall be filed with the Secretary of State and shall be executed and filed in accordance with, and shall otherwise comply, with all of the requirements of this chapter, and (ii) no such amendment, restatement, dissolution or cancellation shall be filed in the office of the chancery clerk of any county of this state.

(c) The repeal of any existing statutory provision by this chapter does not impair any contract or affect any right accrued before January 1, 1988.

SOURCES: Laws, 1987, ch. 488, § 1106; Laws, 1988, ch. 396, eff from and after passage (approved April 20, 1988).

§ 79-14-1107. Rules for cases not provided for in this chapter.

In any case not provided for in this chapter, the provisions of the Mississippi Uniform Partnership Act govern.

SOURCES: Laws, 1987, ch. 488, § 1107, eff from and after January 1, 1988.

Cross References — Mississippi Uniform Partnership Act, see §§ 79-13-101 et seq.

CHAPTER 15

Investment Trusts

General Provisions	79-15-1
Foreign Investment Trusts	79-15-101

GENERAL PROVISIONS

SEC.

79-15-1.	Short title.
79-15-3.	Definitions.
79-15-5.	Organization.
79-15-7.	What declaration shall contain.
79-15-9.	Powers and liabilities of trustees.
79-15-11.	Certificates of beneficial interest.
79-15-13.	Liability of holders of certificates of beneficial interest.
79-15-15.	The election and removal of trustees.
79-15-17.	Amendment of declaration of trust.
79-15-19.	Recording.
79-15-21.	Duration of investment trust; rule against perpetuities and restraint of alienation are not violated.
79-15-23.	How investment trust sued.
79-15-25.	How investment trust taxed.
79-15-27.	Effect of chapter on prior rights, duties, penalties and proceedings.
79-15-29.	Applicability of other laws; repeals.

§ 79-15-1. Short title.

This chapter may be cited as "The Mississippi Investment Trust Law."

SOURCES: Codes, 1942, § 5570-01; Laws, 1962, ch. 238, § 1, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

Cross References — Small business investment companies, see §§ 79-7-1 et seq.
Foreign investment trusts, see §§ 79-15-101 et seq.

§ 79-15-3. Definitions.

(1) An "investment trust" is an express trust created by a written declaration of trust whereby three (3) or more trustees agree to hold and manage in trust property conveyed or to be conveyed to them as trustees for the benefit of such persons as may be or become holders of transferable certificates evidencing the beneficial interest in the trust estate. An investment trust organized in conformity with and by specific reference to this chapter is declared to be neither a general nor a limited partnership, even though the declaration of trust may contain provisions not expressly or by implication contained in this chapter, and even though one (1) or more of the trustees may be or become the holder of a certificate of beneficial interest in the investment trust of which he is trustee.

(2) A "foreign investment trust" is an investment trust for profit organized under laws other than the laws of this state for a purpose or purposes for which an investment trust may be organized under this chapter.

SOURCES: Codes, 1942, § 5570-02; Laws, 1962, ch. 238, § 2; Laws, 1978, ch. 463, § 1, eff from and after July 1, 1978.

Cross References — Provision for income tax deduction with respect to dividends distributed during the taxable year by an investment trust defined in this section, see § 27-7-17.

Limited partnerships, see §§ 79-14-101 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts §§ 1 et seq.

CJS. 12 C.J.S., Business Trusts § 1, 3.

§ 79-15-5. Organization.

(1) An investment trust may be established by a declaration of trust, duly executed by three or more trustees, for any lawful purpose including, but not limited to, acquiring, managing, improving, leasing, dealing in, selling, or otherwise alienating, mortgaging, or otherwise encumbering, real and personal property of all kinds, and descriptions, including, dealing in, purchasing, holding, selling and exchanging stocks, bonds, mortgages, deeds of trust and other securities of all kinds and descriptions; receiving the income, dividends, rents, profits and returns therefrom, and investing same or distributing same to the beneficial owners of the trust in accordance with the terms of the declaration of trust.

(2) At all times during the existence of the investment trust, at least one of the trustees shall be a natural person and a resident of the State of Mississippi. The other trustees need not be natural persons or residents of this state unless the declaration of trust or bylaws so require. The declaration of trust or bylaws may provide other or additional qualifications for the trustees consistent with this chapter.

SOURCES: Codes, 1942, § 5570-03; Laws, 1962, ch. 238, § 3, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts §§ 12 et seq.

4 Am. Jur. Legal Forms 2d, Business Trusts §§ 51:15, 51:23 et seq.

15 Am. Jur. Legal Forms 2d, Real Es-

tate Investment Trusts §§ 218:11 et seq. (declaration of trust).

CJS. 12 C.J.S., Business Trusts §§ 9-14.

§ 79-15-7. What declaration shall contain.

The declaration of trust of an investment trust shall contain:

(a) The name under which the trust shall conduct its business, which name shall include the words "investment trust" but shall not include the words "trust company."

(b) An express statement that the trust is formed pursuant to this chapter, as now or hereafter amended, and that all provisions of the declaration of trust are subject to and intended to be construed in conformity with the provisions of this chapter, as now or hereafter amended.

(c) The post-office address of the principal office and place of business of the trust.

(d) The full name and post-office address of the initial trustees of the trust.

(e) The aggregate number of shares of beneficial interest which the trust shall have authority to issue, the unit value in dollars to be received by the trust for the issuance of each of such shares, and a statement that each share shall be equal in all respects to every other share.

(f) The manner of calling and conducting meetings of the holders of certificates of beneficial interest, and the mode or voting by proxy, provided that a meeting of the holders of certificates of beneficial interest shall be held at least annually.

(g) A requirement that the trustees shall keep accurate and complete books of account and shall keep minutes of the proceedings of the trustees and shall keep a record of the holders of certificates of beneficial interest, giving the names and addresses of all such holders and the number of shares held by each, which books and records shall be available for inspection by any holders of a certificate of beneficial interest, at the principal place of business during normal business hours, upon reasonable notice. Provided, that nothing in this chapter shall impair the power of any court of competent jurisdiction upon a proper showing to compel the production, for examination of the books and the records of account, minutes, and record of holders of certificates of beneficial interest, by any person who for cause shown is entitled to conduct such examination.

(h) The declaration of trust may contain any other terms and provisions deemed necessary or desirable for the purposes of the investment trust and consistent with this chapter.

SOURCES: Codes, 1942, § 5570-04; Laws, 1962, ch. 238, § 4, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts §§ 13, 14.
4 Am. Jur. Legal Forms 2d, Business Trusts §§ 51:15, 51:23 et seq.

15 Am. Jur. Legal Forms 2d, Real Estate Investment Trusts §§ 218:11 et seq. (declaration of trust).
CJS. 12 C.J.S., Business Trusts § 14.

§ 79-15-9. Powers and liabilities of trustees.

(1) The trustees shall hold the legal title to all property at any time belonging to the investment trust, and shall have complete control over the management, operation, disposition, investment and reinvestment of such property and complete control of the management of the business affairs of the investment trust. The trustees may, if so provided in the declaration of trust, elect one of their number as chairman and elect such other officers as may be provided in the declaration of trust. The trustees may designate one or more of their number to act for and on behalf of the trustees in the execution of deeds, notes and other written instruments.

(2) The trustees shall have such powers as to the investment and management of the trust estate as may be set out in the declaration of trust, without regard to the type of investments to which trustees generally are restricted by the provisions of Section 91-13-1, Mississippi Code of 1972, as now or hereafter amended, or by any other statute or rule of law or equity. Unless the declaration of trust shall so provide, it shall not be necessary for an investment trust or the trustees thereof to file an accounting with any court, except upon liquidation of the trust. Provided, however, that nothing in this chapter shall impair the power of any court of competent jurisdiction, upon a proper showing of cause, to compel an accounting by the trustees of an investment trust of all funds held by them in such capacity.

(3) Liability to third persons for any act, omission, or obligation of an investment trust or of a trustee of an investment trust, when acting in such capacity, shall extend to the whole of the trust estate or to so much thereof as may be necessary to discharge such liability, but no trustee shall be personally or individually liable to third persons for any such act, omission, or obligation, unless such trustee with respect to such act, omission, or obligation engaged in intentional fraud or other unlawful conduct prohibited by statute.

SOURCES: Codes, 1942, § 5570-05; Laws, 1962, ch. 238, § 5, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts §§ 43 et seq. 51:103 et seq., 51:123 et seq., 51:143 et seq.

5 Am. Jur. Pl & Pr Forms (Rev), Business Trusts, Forms 1, 4.

4 Am. Jur. Legal Forms 2d, Business Trusts §§ 51:51 et seq., 51:91-51:93,

CJS. 12 C.J.S., Business Trusts §§ 27 et seq.

§ 79-15-11. Certificates of beneficial interest.

(1) The beneficial ownership of an investment trust shall be evidenced by certificates issued by the trustees in units of value to be provided by the trust instrument. No investment trust shall issue certificates of beneficial interest except for money, labor done, or services rendered or property actually received for the use and lawful purposes of the investment trust. Any investment trust

may purchase any property authorized by its declaration of trust, or necessary for the use and lawful purposes of such investment trust, and may issue certificates of beneficial interest to the amount of the value thereof in payment therefor. Any certificate of beneficial interest issued in compliance with this section shall be fully paid, and the holder thereof shall not be liable to any further call or for any further payment. No assessment shall be made against the interest of any holder of such fully paid certificates. In the absence of fraud in the transaction, the judgment of the trustees as to the value of labor done or services performed or property purchased shall be conclusive. For the purpose of determining whether certificates of beneficial interest of any investment trust are fully paid and not liable to any further call, no deduction shall be made in computing the amount of consideration received by such investment trust for such certificates of beneficial interest, for such reasonable compensation or discount in the sale, underwriting, or purchase of such certificates by underwriters or dealers or others performing similar services as may be paid or allowed by the investment trust; and for such purpose the judgment of the trustees as the value of such services shall be conclusive in the absence of fraud in the transaction.

(2) The certificates of beneficial interest issued pursuant to this section shall be transferable in the same manner as stock certificates of a business corporation are transferable, and the issuance and transfer of such certificates of beneficial interest shall be governed by the statutes applicable to the issuance and transfer of stock of business corporations to the extent that such statutes are not inconsistent with the provisions and purposes of this chapter.

SOURCES: Codes, 1942, § 5570-06; Laws, 1962, ch. 238, § 6, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

Cross References — Regulation of transfer of investment securities under the Uniform Commercial Code, see §§ 75-8-101 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts §§ 21 et seq.	CJS. 12 C.J.S., Business Trusts §§ 16-20.
4 Am. Jur. Legal Forms 2d, Business Trusts §§ 51:164 et seq., 51:174, 51:175.	

§ 79-15-13. Liability of holders of certificates of beneficial interest.

No holder of a fully paid certificate of beneficial interest in an investment trust shall be personally or individually liable in any manner whatever for any debts, acts, omissions, or obligations incurred by the trustees or by the investment trust. It is expressly declared to be the intention of this chapter that the holders of fully paid certificates of beneficial interest issued by an investment trust organized pursuant to this chapter shall not be considered to be partners, either general or limited, in the business of the trust, and the

limited liability provided by this section shall not be altered by reason of the fact that the declaration of trust may contain a provision for the election of successor trustees by the holders of certificates of beneficial interest.

SOURCES: Codes, 1942, § 5570-07; Laws, 1962, ch. 238, § 7, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

Cross References — Limited partnerships, see §§ 79-14-101 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts §§ 33 et seq. **CJS.** 12 C.J.S., Business Trusts §§ 22 et seq.

4 Am. Jur. Legal Forms 2d, Business Trusts §§ 51:183 et seq., 51:194, 51:195.

§ 79-15-15. The election and removal of trustees.

The declaration of trust shall provide for the annual election of successor trustees by the holders of certificates of beneficial interest, and shall further provide for the election of successor trustees by the holder of beneficial interest in the event of the death, resignation or removal of a trustee. The election of successor trustees shall not be deemed an amendment to the declaration of trust within the meaning of this chapter.

SOURCES: Codes, 1942, § 5570-08; Laws, 1962, ch. 238, § 8, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

RESEARCH REFERENCES

Am Jur. 13 Am. *Jur. 2d, Business Trusts §§ 43-48. **CJS.** 12 C.J.S., Business Trusts §§ 27, 29.

4 Am. Jur. Legal Forms 2d, Business Trusts §§ 51:51, 51:78, 51:191.

§ 79-15-17. Amendment of declaration of trust.

(1) The declaration of trust shall provide that it can be amended only by the affirmative vote of the holders of at least two thirds (2/3) of the amount of the then outstanding certificates of beneficial interest. If the declaration of trust shall provide that an amendment to the declaration of trust shall require an affirmative vote of holders of a greater percentage in the amount of then outstanding certificates of beneficial interest than provided by this section, then the declaration of trust shall control. The foregoing provisions shall not be applicable to an amendment made to a declaration of trust at any time prior to the issuance of certificates of beneficial interest; at any time prior to the issuance of certificates and beneficial interest, the declaration of trust may be amended by affirmative vote of a majority of the trustees.

(2) No amendment to the declaration of trust shall be effective to alter or expand the liability of the trustees or the liability of the holders of fully paid

certificates of beneficial interest, contrary to the liability provided in this chapter.

SOURCES: Codes, 1942, § 5570-09; Laws, 1962, ch. 238, § 9, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

RESEARCH REFERENCES

ALR. Power of court to authorize modification of trust instrument because of changes in tax law. 57 A.L.R.3d 1044.

4 Am. Jur. Legal Forms 2d, Business Trusts §§ 51:73, 51:74.

Am Jur. 13 Am. Jur. 2d, Business Trusts § 16.

§ 79-15-19. Recording.

The declaration of trust shall be signed and acknowledged by the initial trustees and recorded in the office of the clerk of the chancery court in the county in which the principal place of business of the investment trust is located, and also with the Secretary of State of Mississippi, and such officers are authorized to charge a fee for such recording, as in the manner and in the amount provided for the recording of articles of incorporation of business corporations. Amendments to declarations of trust shall be recorded in the manner above set out for the original.

SOURCES: Codes, 1942, § 5570-10; Laws, 1962, ch. 238, § 10, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

Cross References — Secretary of State, see §§ 7-3-1 et seq.

Duty of chancery court clerk to keep records, see § 9-5-137.

Recording of instruments by chancery court clerk, see § 89-5-25.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts § 15.

CJS. 12 C.J.S., Business Trusts §§ 30, 42.

§ 79-15-21. Duration of investment trust; rule against perpetuities and restraint of alienation are not violated.

(1) An investment trust shall not be deemed invalid as violating the rule against perpetuities or any law or statute against suspension of the powers of alienation. Such trust may continue for an indefinite period or for such time as may be necessary for the accomplishment of the purposes for which it was created; provided, however, that the declaration of trust shall contain a provision that such trust may be terminated at any time by the affirmative vote of holders of at least two thirds (2/3) of the amount of certificates of beneficial interest then outstanding, in the manner hereafter provided.

(2) At any meeting called for the purpose, notice of the purpose being contained in the call, the holders of at least two thirds (2/3) of the amount of

certificates of beneficial interest then outstanding may by their affirmative vote dissolve the investment trust; the trustees shall thereupon file with the secretary of state an attested certified copy of the minutes of the meeting at which such vote was taken, together with a statement of the names and addresses of all trustees duly verified. The secretary of state, upon receipt of the above, shall record same and execute a certificate to the effect that such minutes and statement have been filed and that it appears therefrom that the investment trust has complied with this section. Such certificate shall be filed for record by the investment trust in the office of the clerk of the chancery court of the county wherein the original declaration of trust was recorded, and thereupon such investment trust shall be dissolved and shall cease to carry on business except for the purpose of adjusting and winding up its affairs. It shall then proceed to adjust and wind up its business, be empowered to carry out its contracts, collect its accounts receivable, and liquidate its assets and apply the same in discharge of its obligations and, after paying such obligations, the holder of each certificate of beneficial interest, according to the amount paid in thereon, shall be entitled to his portion of the balance of the assets. Said investment trust shall continue in existence for the purpose of discharging its debts and obligations, collect and distribute its assets, and doing all other acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up for three (3) years.

(3) If the holders of certificates of beneficial interest of an investment trust shall vote to dissolve, any holder of a certificate of beneficial interest of such trust may, within six (6) months from the date that the certificate of dissolution is filed with the chancery clerk as herein provided, demand an accounting by the trustees of all assets held by them in such capacity; and the chancery court of the county wherein the original declaration of trust was recorded shall have jurisdiction to compel such accounting upon petition by any holder of a certificate of beneficial interest in the investment trust.

SOURCES: Codes, 1942, § 5570-11; Laws, 1962, ch. 238, § 11, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

Cross References — Secretary of state, see §§ 7-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts § 20.	4 Am. Jur. Legal Forms 2d, Business Trusts §§ 51:204-51:208.
5 Am. Jur. Pl & Pr Forms (Rev), Business Trusts, Form 1.	CJS. 12 C.J.S., Business Trusts § 15.

§ 79-15-23. How investment trust sued.

(1) An investment trust may sue or be sued as a separate and distinct entity, under the name set forth in the declaration of trust, and it shall not be necessary to join the trustees individually or the holders of certificates of

beneficial interest as parties plaintiff or defendant. An investment trust may be sued, at law or in equity, for debts and other obligations incurred by the trustees in the performance of their duties under the declaration of trust, and for damages to third persons resulting from the negligence of such trustees in the performance of their duties under the declaration of trust, and its property shall be subject to attachment and execution, all in like manner as if it were a corporation.

(2) The trustees shall severally be agents for service of process upon an investment trust. An investment trust organized pursuant to this chapter shall be deemed to be domiciled in the State of Mississippi and in the county of its principal office and place of business within that state, without regard to the residence of the trustees.

SOURCES: Codes, 1942, § 5570-12; Laws, 1962, ch. 238, § 12, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

Cross References — Attachments generally, see §§ 11-33-1 et seq.

Service of process on trustees, see § 13-3-41.

Levy of execution generally, see §§ 13-3-111 et seq.

RESEARCH REFERENCES

Am Jur. 5 Am. Jur. Pl & Pr Forms **CJS.** 12 C.J.S., Business Trusts §§ 50,
(Rev), Business Trusts, Forms 2, 4, 5. 52-61, 64.

§ 79-15-25. How investment trust taxed.

The income of an investment trust shall be taxed as if the investment trust were a business corporation with the exception of the dividend deduction allowed an investment trust under Section 27-7-17. An investment trust shall be deemed a domestic corporation for purposes of the corporation franchise tax imposed by Sections 27-13-1 through 27-13-61, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 5570-13; Laws, 1962, ch. 238, § 13; Laws, 1985, ch. 411, § 2; Laws, 1987, ch. 356, § 2, eff from and after January 1, 1988.

Cross References — Income tax, see §§ 27-7-1 et seq.

Corporation franchise tax, see §§ 27-13-1 et seq.

§ 79-15-27. Effect of chapter on prior rights, duties, penalties and proceedings.

This chapter shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before May 15, 1962.

SOURCES: Codes, 1942, § 5570-14; Laws, 1962, ch. 238, § 14, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

§ 79-15-29. Applicability of other laws; repeals.

The provisions of the Investment Securities chapter and other appropriate provisions of the Mississippi Uniform Commercial Code, and the provisions of the Mississippi Blue Sky Laws, Sections 75-71-1 through 75-71-57, Mississippi Code of 1972, and the regulations and rules adopted thereunder, and the provisions of the Fiduciary Transfer Law, Sections 91-11-1 through 91-11-21, Mississippi Code of 1972, shall be applicable to investment trusts organized pursuant to this chapter. All other laws applicable to business corporations organized for profit shall be applicable to investment trusts organized pursuant to this chapter, to the extent that such laws are not inconsistent with the provisions and purposes of this chapter. All laws or parts of laws in conflict with the provisions of this chapter are hereby repealed to the extent of such conflict only.

SOURCES: Codes, 1942, § 5570-15; Laws, 1962, ch. 238, § 15, eff immediately upon its passage and approval by the Governor (approved May 15, 1962).

Editor's Note — Sections 75-71-1 through 75-71-57 referred to in this section were repealed by Laws of 1981, ch. 521, § 418, eff from and after July 1, 1981. For current provisions, see §§ 75-71-101 et seq.

Cross References — Investment securities under Uniform Commercial Code, see §§ 75-8-101 et seq.

RESEARCH REFERENCES

ALR. What gives rise to right of rescission under state blue sky laws. 52 A.L.R.5th 491.

• FOREIGN INVESTMENT TRUSTS

SEC.

- 79-15-101. Certificate of authority; necessity of; what constitutes not transacting business.
- 79-15-103. Rights and responsibilities similar to domestic trusts.
- 79-15-105. Name of foreign investment trust.
- 79-15-107. Prohibited change of name; penalties.
- 79-15-109. Certificate of authority; application.
- 79-15-111. Certificate of authority; issuance.
- 79-15-113. Certificate of authority; right to transact business upon issuance; right of state to revoke or suspend.
- 79-15-115. Registered office and registered agent; requirement of maintenance in state.
- 79-15-117. Registered office and registered agent; change; resignation of registered agent.
- 79-15-119. Service of process.
- 79-15-121. Declaration of trust; filing of amendment.
- 79-15-123. Certificate of authority; amendments.
- 79-15-125. Certificate of withdrawal; application and filing.
- 79-15-127. Certificate of withdrawal; issuance.
- 79-15-129. Certificate of authority; revocation; causes.

- 79-15-131. Certificate of authority; revocation; procedure.
- 79-15-133. Certificate of authority; failure to obtain; ability to sue and be sued.
- 79-15-135. Fees.
- 79-15-137. Disbursement of collected funds.
- 79-15-139. Law applicable to foreign investment trusts previously transacting business in state.

§ 79-15-101. Certificate of authority; necessity of; what constitutes not transacting business.

No foreign investment trust shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign investment trust shall be entitled to procure a certificate of authority under Sections 79-15-101 through 79-15-139 to transact in this state any business which an investment trust organized under the Mississippi Investment Trust Law is not permitted to transact. A foreign investment trust shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such foreign investment trust is organized governing its organization and internal affairs differ from the laws of this state, and nothing contained in Sections 79-15-101 through 79-15-139 shall be construed to authorize this state to regulate the organization or the internal affairs of such foreign investment trust.

Without excluding other activities which may not constitute transacting business in this state, a foreign investment trust shall not be considered to be transacting business in this state, for the purposes of Sections 79-15-101 through 79-15-139, by reason of carrying on in this state any one (1) or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(b) Maintaining bank accounts.

(c) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(d) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(e) Transacting any business in interstate commerce.

(f) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature.

(g) Investing in or acquiring, in transactions outside of Mississippi, royalties and other non-operating mineral interests, and the execution of division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests.

SOURCES: Laws, 1978, ch. 463, § 2, eff from and after July 1, 1978.

Cross References — Domestic investment trusts, see §§ 79-15-1 et seq.
Filing fees, see § 79-15-135.

RESEARCH REFERENCES

Am Jur. 13 Am. Jur. 2d, Business Trusts § 79. **CJS.** 12 C.J.S., Business Trusts §§ 11, 51, 52, 56.

§ 79-15-103. Rights and responsibilities similar to domestic trusts.

A foreign investment trust which shall have received a certificate of authority under Sections 79-15-101 through 79-15-139 shall, until a certificate of revocation or of withdrawal shall have been issued as provided in Sections 79-15-123 through 79-15-129, enjoy the same, but no greater, rights and privileges as a domestic investment trust organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in Sections 79-15-101 through 79-15-139 otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic investment trust of like character.

SOURCES: Laws, 1978, ch. 463, § 3, eff from and after July 1, 1978.

Cross References — Domestic investment trusts, see §§ 79-15-1 et seq.

§ 79-15-105. Name of foreign investment trust.

No certificate of authority shall be issued to a foreign investment trust unless the name of such foreign investment trust:

(a) shall contain the words "investment trust", or such foreign investment trust shall, for use in this state, add at the end of its name the words "investment trust".

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its declaration of trust.

(c) shall not be the same as, or deceptively similar to, the name of any domestic investment trust existing under the laws of this state or any foreign investment trust authorized to transact business in this state.

SOURCES: Laws, 1978, ch. 463, § 4, eff from and after July 1, 1978.

Cross References — Domestic investment trusts, see §§ 79-15-1 et seq.

§ 79-15-107. Prohibited change of name; penalties.

Whenever a foreign investment trust which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such foreign investment trust shall be suspended and it shall not

thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state.

SOURCES: Laws, 1978, ch. 463, § 5, eff from and after July 1, 1978.

§ 79-15-109. Certificate of authority; application.

A foreign investment trust, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the foreign investment trust and the state or country under the laws of which it is organized.

(b) if the name of the foreign investment trust does not contain the words "investment trust", then the name containing the words "investment trust" which it elects to use in this state.

(c) the date of declaration of trust and the period of duration of the trust.

(d) the address of the principal office of the foreign investment trust in the state or country under the laws of which it is organized.

(e) the address of the proposed registered office of the foreign investment trust in this state, and the name of its proposed registered agent in this state at such address.

(f) the purpose or purposes of the foreign investment trust which it proposes to pursue in the transaction of business in this state.

(g) the names and respective addresses of the trustees of the foreign investment trust.

(h) a statement of the aggregate number of shares of beneficial interest which the foreign investment trust has authority to issue and the unit value in dollars to be received by the trust for the issuance of each of such shares.

(i) a statement of the aggregate number of issued shares of beneficial interest.

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable as in Section 79-15-135 prescribed.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by at least three (3) of the trustees and verified.

SOURCES: Laws, 1978, ch. 463, § 6, eff from and after July 1, 1978.

§ 79-15-111. Certificate of authority; issuance.

Duplicate originals of the application of the foreign investment trust for a certificate of authority shall be delivered to the secretary of state, together with a copy of its declaration of trust and all amendments thereto, duly authenticated by the proper officer where its declaration of trust and amend-

ments thereto were recorded under the laws of the state or country where it is organized.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in Section 79-15-135 prescribed:

(a) endorse on each of such documents the word "FILED", and the month, day and year of the filing thereof.

(b) file in his office one (1) of such duplicate originals of the application and the copy of the declaration of trust and amendments thereto.

(c) issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the foreign investment trust or its representative.

SOURCES: Laws, 1978, ch. 463, § 7, eff from and after July 1, 1978.

§ 79-15-113. Certificate of authority; right to transact business upon issuance; right of state to revoke or suspend.

Upon the issuance of a certificate of authority by the secretary of state, the foreign investment trust shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in Section 79-15-129.

SOURCES: Laws, 1978, ch. 463, § 8, eff from and after July 1, 1978.

§ 79-15-115. Registered office and registered agent; requirement of maintenance in state.

Each foreign investment trust authorized to transact business in this state shall have and continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of business in this state.

(b) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

SOURCES: Laws, 1978, ch. 463, § 9, eff from and after July 1, 1978.

§ 79-15-117. Registered office and registered agent; change; resignation of registered agent.

A foreign investment trust authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

- (a) the name of the foreign investment trust.
- (b) the address of its then registered office.
- (c) if the address of its registered office be changed, the address to which the registered office is to be changed.
- (d) the name of its then registered agent.
- (e) if its registered agent be changed, the name of its successor registered agent.
- (f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- (g) that such change was authorized by resolution duly adopted by its trustees.

Such statement shall be executed by the foreign investment trust by at least three (3) of its trustees, and verified by them, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this section, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a foreign investment trust may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the foreign investment trust at its principal office in the state or country under the laws of which it is organized. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the secretary of state.

SOURCES: Laws, 1978, ch. 463, § 10, eff from and after July 1, 1978.

Cross References — Filing fees, see § 79-15-135.

§ 79-15-119. Service of process.

The registered agent so appointed by a foreign investment trust authorized to transact business in this state shall be an agent of such foreign investment trust upon whom any process, notice or demand required or permitted by law to be served upon the foreign investment trust may be served.

If the registered agent be a corporation, service of process upon it as such agent may be made at its registered office in this state by service on the president, a vice-president, an assistant vice-president, the secretary or an assistant secretary of such registered agent.

Whenever a foreign investment trust authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign investment trust shall be suspended or revoked, then the secretary of state shall be an agent of such foreign investment trust upon whom any such process, notice or demand may be served. Service on the secretary of state of any such process, notice or demand shall be made by delivering to and leaving with him, or with a person in his office designated by him, two (2) true copies

of such process, notice or demand and on payment of a fee of five dollars (\$5.00). In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one (1) of such copies thereof to be forwarded by registered mail, addressed to the foreign investment trust at its principal office in the state or country under the laws of which it is organized.

When service is had on the secretary of state, no judgment shall be taken in the case until thirty (30) days after the date of such service.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon an investment trust in any other manner now or hereafter permitted by law.

SOURCES: Laws, 1978, ch. 463, § 11, eff from and after July 1, 1978.

RESEARCH REFERENCES

Am Jur. 13 **Am. Jur.** 2d, Business Trusts § 102.

§ 79-15-121. Declaration of trust; filing of amendment.

Whenever the declaration of trust of a foreign investment trust authorized to transact business in this state is amended, such foreign investment trust shall, within sixty (60) days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer where its declaration of trust and amendments thereto were recorded under the laws of the state or country where it is organized. The filing thereof shall not of itself enlarge or alter the purpose or purposes which such foreign investment trust is authorized to pursue in the transaction of business in this state, nor authorize such foreign investment trust to transact business in this state under any other name than the name set forth in its certificate of authority.

SOURCES: Laws, 1978, ch. 463, § 12, eff from and after July 1, 1978.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the first sentence was corrected by substituting "business in this state is amended" for "business in this state are amended."

Cross References — Filing fees, see § 79-15-135.

RESEARCH REFERENCES

Am Jur. 4 **Am. Jur.** Legal Forms 2d, Business Trusts § 51:15.

§ 79-15-123. Certificate of authority; amendments.

A foreign investment trust authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

SOURCES: Laws, 1978, ch. 463, § 13, eff from and after July 1, 1978.

Cross References — Filing fees, see § 79-15-135.

§ 79-15-125. Certificate of withdrawal; application and filing.

A foreign investment trust authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign investment trust shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) The name of the foreign investment trust and the state or country under the laws of which it is organized.

(b) That the foreign investment trust is not transacting business in this state.

(c) That the foreign investment trust surrenders its authority to transact business in this state.

(d) That the foreign investment trust revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the foreign investment trust was authorized to transact business in this state may thereafter be made on such foreign investment trust by service thereof on the secretary of state.

(e) A post-office address to which the secretary of state may mail a copy of any process against the foreign investment trust that may be served on him.

(f) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign investment trust as in Sections 79-15-101 through 79-15-139 prescribed, and a certificate of the state tax commission that the foreign investment trust owes no sales taxes.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the trust by at least three (3) of its trustees and verified by them, or if the foreign investment

trust is in the hands of a receiver or trustee, shall be executed on behalf of the foreign investment trust by such receiver or trustee and verified by him.

SOURCES: Laws, 1978, ch. 463, § 14, eff from and after July 1, 1978.

Editor's Note — Effective July 1, 2010, Section 27-3-4 provides that the terms “Mississippi State Tax Commission,” “State Tax Commission,” “Tax Commission” and “commission” appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.”

Cross References — Filing fees, see § 79-15-135.

§ 79-15-127. Certificate of withdrawal; issuance.

Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of Section 79-15-125, he shall, when all fees and sales taxes have been paid as by law prescribed:

- (a) Endorse on each of such duplicate originals the word “Filed,” and the month, day and year of the filing thereof.
- (b) File one (1) of such duplicate originals in his office.
- (c) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the foreign investment trust or its representative. Upon the issuance of such certificate of withdrawal, the authority of the foreign investment trust to transact business in this state shall cease.

SOURCES: Laws, 1978, ch. 463, § 15, eff from and after July 1, 1978.

Cross References — Filing fees, see § 79-15-135.

§ 79-15-129. Certificate of authority; revocation; causes.

The certificate of authority of a foreign investment trust to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

- (a) The foreign investment trust has failed to pay any fees prescribed by Sections 79-15-101 through 79-15-139 when they have become due and payable; or
- (b) The foreign investment trust has failed to appoint and maintain a registered agent in this state as required by Section 79-15-115; or
- (c) The foreign investment trust has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by Section 79-15-117; or
- (d) The foreign investment trust has failed to file in the office of the secretary of state any amendment to its declaration of trust within the time prescribed by Section 79-15-121; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such foreign investment trust pursuant to Sections 79-15-101 through 79-15-139.

No certificate of authority of a foreign investment trust shall be revoked by the secretary of state unless (1) he shall have given the foreign investment trust not less than sixty (60) days' notice thereof by mail addressed to its registered office in this state, and (2) the foreign investment trust shall fail prior to revocation to pay such fees, or file the required statement of change of registered agent or registered office, or file such articles of amendment or correct such misrepresentation.

SOURCES: Laws, 1978, ch. 463, § 16, eff from and after July 1, 1978.

Cross References — Filing fees, see § 79-15-135.

§ 79-15-131. Certificate of authority; revocation; procedure.

Upon revoking any such certificate of authority, the secretary of state shall:

- (a) Issue a certificate of revocation in duplicate.
- (b) File one (1) of such certificates in his office.
- (c) Mail to such foreign investment trust at its registered office in this state a notice of such revocation accompanied by one (1) of such certificates.

Upon issuance of such certificate of revocation, the authority of the foreign investment trust to transact business in this state shall cease.

SOURCES: Laws, 1978, ch. 463, § 17, eff from and after July 1, 1978.

§ 79-15-133. Certificate of authority; failure to obtain; ability to sue and be sued.

No foreign investment trust transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such foreign investment trust on any right, claim or demand arising out of the transaction of business by such foreign investment trust in this state.

The failure of a foreign investment trust to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such foreign investment trust, and shall not prevent such foreign investment trust from defending any action, suit or proceeding in any court of this state.

A foreign investment trust which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by Section 79-15-135 upon such foreign investment trust had it duly applied for and received a certificate of authority to transact business in this state as

required by Sections 79-15-101 et seq. and thereafter filed all reports required by said sections, plus all penalties imposed by said sections for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

SOURCES: Laws, 1978, ch. 463, § 18, eff from and after July 1, 1978.

RESEARCH REFERENCES

CJS. 12 C.J.S., Business Trusts §§ 11, 51, 52, 56.

§ 79-15-135. Fees.

The secretary of state shall charge and collect from foreign investment trust for:

(a) Filing a statement of change of address of registered office or change of registered agent, or both, five dollars (\$5.00).

(b) Filing an application of a foreign investment trust for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred dollars (\$100.00).

(c) Filing an application of a foreign investment trust for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, twenty dollars (\$20.00).

(d) Filing a copy of an amendment to the articles of incorporation of a foreign investment trust holding a certificate of authority to transact business in this state, twenty dollars (\$20.00).

(e) Filing an application for withdrawal of a foreign investment trust and issuing a certificate of withdrawal, five dollars (\$5.00).

(f) Filing any other statement or report of a foreign investment trust, five dollars (\$5.00).

(g) For furnishing a certified copy of any document, instrument, or paper relating to a foreign investment trust, sixty cents (60¢) per page and two dollars (\$2.00) for the certificate and affixing the seal thereto, with a minimum charge of three dollars (\$3.00).

(h) At the time of any service of process on him as resident agent of a foreign investment trust, five dollars (\$5.00), which amount may be recovered as taxable cost by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SOURCES: Laws, 1978, ch. 463, §§ 19, 20, eff from and after July 1, 1978.

§ 79-15-137. Disbursement of collected funds.

All fees and charges to be collected by the secretary of state under the provisions of Sections 79-15-101 through 79-15-139 including the assessment and collection thereof of all penalties shall be paid into the general funds of the state treasury, less ten percent (10%) as received thereof to be retained and

used by the secretary of state as necessary expense to administer the provisions of said sections as the secretary of state deems necessary.

SOURCES: Laws, 1978, ch. 463, § 21, eff from and after July 1, 1978.

§ 79-15-139. Law applicable to foreign investment trusts previously transacting business in state.

Foreign investment trusts which are transacting business in this state at the time Sections 79-15-101 through 79-15-139 take effect, for a purpose or purposes for which a foreign investment trust might secure such authority under Sections 79-15-101 through 79-15-139, shall, subject to the limitations set forth in their respective certificates of authority, charters or articles of incorporation, be entitled to all the rights and privileges applicable to foreign investment trusts procuring certificates of authority to transact business in this state under Sections 79-15-101 through 79-15-139, and from the time said sections take effect such foreign investment trust shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign investment trusts procuring certificates of authority to transact business in this state under Sections 79-15-101 through 79-15-139.

Within one (1) year from July 1, 1978, said foreign investment trust transacting business within this state at the time said sections take effect shall secure a certificate of authority or be subject to the penalties, restrictions and limitations otherwise herein provided.

SOURCES: Laws, 1978, ch. 463, § 22, eff from and after July 1, 1978.

CHAPTER 16

Mississippi Registration of Foreign Business Trusts Act

SEC.	
79-16-1.	Short title.
79-16-3.	Reservation of power to amend or repeal.
79-16-5.	Certificate of authority; necessity of; what constitutes not transacting business.
79-16-7.	Name of foreign business trust.
79-16-9.	Prohibited change of name; penalties.
79-16-11.	Application for certificate of authority.
79-16-13.	Issuance of certificate of authority.
79-16-15.	Changes and amendments.
79-16-17.	Registered office and registered agent; requirement of maintenance in state.
79-16-19.	Registered office and registered agent; change; resignation of registered agent.
79-16-21.	Service of process.
79-16-23.	Certificate of withdrawal; application and filing.
79-16-25.	Certificate of withdrawal; issuance.
79-16-27.	Certificate of authority; revocation; causes.
79-16-29.	Certificate of authority; revocation procedure.
79-16-31.	Consequences of transacting business without authority.
79-16-33.	Fees.
79-16-35.	Laws applicable to foreign business trust previously transacting business in this state.

§ 79-16-1. Short title.

This chapter shall be known and may be cited as the “Mississippi Registration of Foreign Business Trusts Act.”

SOURCES: Laws, 1998, ch. 428, § 1, eff from and after July 1, 1998.

§ 79-16-3. Reservation of power to amend or repeal.

The Mississippi Legislature has the power to amend or repeal all or part of this chapter at any time and all foreign business trusts subject to this chapter are governed by the amendment or repeal.

SOURCES: Laws, 1998, ch. 428, § 2, eff from and after July 1, 1998.

§ 79-16-5. Certificate of authority; necessity of; what constitutes not transacting business.

(1) No foreign business trust shall have the right to transact business in this state until it shall have procured a certificate of authority from the Secretary of State. No foreign business trust shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a foreign business trust is not permitted to transact in the state or country in which it was created.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) Maintaining bank accounts;

(c) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(d) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(e) Transacting any business in interstate commerce;

(f) Holding meetings of the board of trustees or holders of beneficial interest or carrying on other activities concerning internal affairs;

(g) Selling through independent contractors;

(h) Creating or procuring indebtedness, mortgages and security interests in real and personal property;

(i) Conducting an isolated transaction that is completed within a period of thirty (30) days and not in the course of a number of repeated transactions of a like nature.

(j) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or

(k) Owning without more, real or personal property.

(3) The list of activities in subsection (2) is not exhaustive.

SOURCES: Laws, 1998, ch. 428, § 3, eff from and after July 1, 1998.

§ 79-16-7. Name of foreign business trust.

(1) The name of each foreign business trust as set forth in its certificate of trust must be such as to distinguish it upon the records of the Office of the Secretary of State from the name of any corporation, limited partnership, limited liability company, investment trust or limited liability partnership reserved, registered, formed or organized under the laws of the State of Mississippi or qualified to do business or registered as a foreign corporation, foreign limited partnership, foreign limited liability company, foreign investment trust or foreign limited liability partnership in the State of Mississippi; provided, however, that a foreign business trust may register under any name which is not such as to distinguish it upon the records of the Office of the Secretary of State from the name of any domestic or foreign corporation, limited partnership, limited liability company, investment trust or limited liability partnership reserved, registered, formed or organized under the laws of the State of Mississippi with the written consent of the other corporation, limited partnership, limited liability company, investment trust or limited liability partnership which written consent shall be filed with the Secretary of State.

(2) The name of each foreign business trust as set forth in its certificate of trust may contain the name of a beneficial owner, a trustee or any other person.

(3) The name of each foreign business trust as set forth in its certificate of trust may contain the following words: "company," "association," "club," "foundation," "fund," "institute," "society," "union," "syndicate," "limited," or "trust" or abbreviations of like import.

(4) The exclusive right to the use of a name may be reserved by a foreign business trust in accordance with the Mississippi Business Corporation Act.

SOURCES: Laws, 1998, ch. 428, § 4, eff from and after July 1, 1998.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq.

§ 79-16-9. Prohibited change of name; penalties.

Whenever a foreign business trust which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such foreign business trust shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state and obtains a certificate of correction or amendment.

SOURCES: Laws, 1998, ch. 428, § 5, eff from and after July 1, 1998.

§ 79-16-11. Application for certificate of authority.

(1) A foreign business trust, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the Secretary of State, which application shall set forth:

(a) The name of the foreign business trust and the state or country under the laws of which it is organized;

(b) The date of declaration of trust and the period of duration of the trust;

(c) The address of the principal office of the foreign business trust in the state or country under the laws of which it is organized;

(d) The address of the registered office of the foreign business trust in this state and the name of its registered agent in this state at such address;

(e) The purpose or purposes of the foreign business trust which it proposes to pursue in the transaction of business in this state;

(f) The names and respective addresses of the trustees of the foreign business trust; and

(g) A statement of the aggregate number of shares of beneficial interest which the foreign business trust has authority to issue and the unit value in dollars to be received by the trust for the issuance of each of such shares.

(2) Such application shall be made on forms prescribed and furnished by the Secretary of State and shall be executed by at least one (1) of the trustees.

(3) A business trust shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of trust records in the state or country under whose law it is created.

SOURCES: Laws, 1998, ch. 428, § 6, eff from and after July 1, 1998.

Cross References — Filing fees, see § 79-15-135.

§ 79-16-13. Issuance of certificate of authority.

If the Secretary of State finds that the application for certificate of authority meets the requirements of this chapter and requisite fees as provided in Section 79-16-33, Mississippi Code of 1972, have been paid, he shall:

- (a) Endorse on the original the word "filed" and the month, day and year of the filing thereof;
- (b) File in his office the original of the application; and
- (c) Issue a certificate of authority to transact business in this state to which he shall affix a copy of the application.

The certificate of authority, together with a copy of the application affixed thereto by the Secretary of State, shall be returned to the business trust or its representative.

SOURCES: Laws, 1998, ch. 428, § 7, eff from and after July 1, 1998.

§ 79-16-15. Changes and amendments.

If any statement in the application for certificate of authority of a foreign business trust was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign business trust shall promptly file in the Office of the Secretary of State a certificate, signed by a trustee, correcting such statement, together with a fee as set forth in Section 79-16-33, Mississippi Code of 1972.

SOURCES: Laws, 1998, ch. 428, § 8, eff from and after July 1, 1998.

§ 79-16-17. Registered office and registered agent; requirement of maintenance in state.

Each foreign business trust authorized to transact business in this state shall have and continuously maintain in this state:

- (a) A registered office which may be, but need not be, the same as its place of business in this state.
- (b) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic or foreign corporation, limited partnership, limited liability company, limited liability partnership, or investment trust autho-

rized to transact business in this state, having a business office identical with such registered office.

SOURCES: Laws, 1998, ch. 428, § 9, eff from and after July 1, 1998.

§ 79-16-19. Registered office and registered agent; change; resignation of registered agent.

A foreign business trust authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the Office of the Secretary of State a statement setting forth:

- (a) The name of the foreign business trust;
- (b) The address of its then registered office;
- (c) If the address of its registered office be changed, the address to which the registered office is to be changed;
- (d) The name of its then registered agent;
- (e) If its registered agent be changed, the name of its successor registered agent;
- (f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;
- (g) That such change was authorized by resolution duly adopted by its trustees.

Such statement shall be executed by the foreign business trust by at least one (1) of its trustees, and verified and delivered to the Secretary of State. If the Secretary of State finds that such statement meets the requirements of this section, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a foreign business trust may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the foreign business trust at its principal office in the state or country under the laws of which it is organized. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

SOURCES: Laws, 1998, ch. 428, § 10, eff from and after July 1, 1998.

Cross References — Filing fees, see § 79-16-33.

§ 79-16-21. Service of process.

(1) The registered agent so appointed by a foreign business trust authorized to transact in this state shall be an agent of such foreign business trust upon whom any process, notice or demand required or permitted by law to be served upon the foreign business trust may be served.

(2) A foreign business trust may be served by registered or certified mail, return receipt requested, addressed to a trustee of the foreign business trust at

its principal office shown on its application for a certificate of authority if the foreign business trust:

(a) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(b) Has withdrawn from transacting business in the State of Mississippi; or

(c) Has had its certificate of authority revoked.

(3) Service is perfected under subsection (2) at the earliest of:

(a) The date the foreign business trust receives the mail;

(b) The date shown on the return receipt, if signed on behalf of the foreign business trust; or

(c) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(4) This section does not prescribe the only means, or necessarily the required means, of serving a foreign business trust.

SOURCES: Laws, 1998, ch. 428, § 11, eff from and after July 1, 1998.

§ 79-16-23. Certificate of withdrawal; application and filing.

(1) A foreign business trust authorized to transact business in this state may withdraw from this state upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign business trust shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(a) The name of the foreign business and the state or country under the laws of which it is organized;

(b) That the foreign business trust is not transacting business in this state;

(c) That the foreign business trust surrenders its authority to transact business in this state;

(d) That the foreign business trust revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based on a cause of action arising in this state during the time the foreign business trust was authorized to transact business in this state may thereafter be made on such foreign business trust by service thereof on the Secretary of State;

(e) A post office address to which the Secretary of State may mail a copy of any process against the foreign business trust that may be served on him;

(f) A commitment to notify the Secretary of State in the future of any change in its mailing address; and

(g) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine and assess any unpaid fees payable by such foreign business trust, and a certificate of the State Tax Commission that the foreign business trust owes no taxes.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the Secretary of State and shall be executed by the trust by at

least one (1) of its trustees, or if the foreign business trust is in the hands of a receiver or trustee, shall be executed on behalf of the foreign business trust by such receiver or trustee.

SOURCES: Laws, 1998, ch. 428, § 12, eff from and after July 1, 1998.

Editor's Note — Effective July 1, 2010, Section 27-3-4 provides that the terms “ ‘Mississippi State Tax Commission,’ ‘State Tax Commission,’ ‘Tax Commission’ and ‘commission’ appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue.”

Cross References — Filing fees, see § 79-16-33.

§ 79-16-25. Certificate of withdrawal; issuance.

(1) Application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application meets the requirements of this chapter, when all fees and taxes have been paid as by law prescribed, he shall:

- (a) Endorse on such application the word “filed,” and the month, day and year of the filing thereof;
- (b) File the application in his office; and
- (c) Issue a certificate of withdrawal.

(2) The certificate of withdrawal, together with a copy of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the foreign business trust or its representative. Upon the issuance of such certificate of withdrawal, the authority of the foreign business trust to transact business in this state shall cease.

SOURCES: Laws, 1998, ch. 428, § 13, eff from and after July 1, 1998.

Cross References — Filing fees, see § 79-16-33.

§ 79-16-27. Certificate of authority; revocation; causes.

(1) The certificate of authority of a foreign business trust to transact business in this state may be revoked by the Secretary of State upon the condition prescribed in this section when:

- (a) The foreign business trust has failed to pay any fees prescribed by law when they become due and payable;
- (b) The foreign business trust has failed to appoint and maintain a registered agent in this state;
- (c) The foreign business trust has failed, after change of its registered office or registered agent, to file in the Office of Secretary of State a statement of such change as required by law; or

(d) A misrepresentation has been made of any material matter in an application, report, affidavit or other document submitted by such foreign business trust pursuant to law.

(2) No certificate of authority of a foreign business trust shall be revoked by the Secretary of State unless:

(a) He shall have given the foreign business trust not less than sixty (60) days' notice thereof by mail addressed to its registered office in this state; and

(b) The foreign business trust shall fail prior to revocation to pay such fees, any taxes owed or file the required statement of change of registered agent or registered office, or file such amendment or correct such misrepresentation.

SOURCES: Laws, 1998, ch. 428, § 14, eff from and after July 1, 1998.

Cross References — Filing fees, see § 79-16-33.

§ 79-16-29. Certificate of authority; revocation procedure.

(1) Upon revoking such certificate of authority, the Secretary of State shall:

(a) Issue a certificate of revocation;

(b) File one (1) of such certificates in his office; and

(c) Mail to such foreign business trust at its registered office in this state a notice of such revocation accompanied by one (1) of such certificates.

(2) Upon issuance of such certificate of revocation, the authority of the foreign business trust to transact business in this state shall cease.

SOURCES: Laws, 1998, ch. 428, § 15, eff from and after July 1, 1998.

§ 79-16-31. Consequences of transacting business without authority.

(1) A foreign business trust transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign business trust that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign business trust or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign business trust, its successor or assignee until it determines whether the foreign business trust or its successor requires a certificate of authority. If it so determines, the court may further stay a proceeding until the foreign business trust or its successor obtains a certificate.

(4) A foreign business trust is liable for a civil penalty of Ten Dollars (\$10.00) for each day, but not to exceed a total of One Thousand Dollars (\$1,000.00) for each year it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection.

(5) Notwithstanding subsections (1) and (2), the failure of a foreign business trust to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

SOURCES: Laws, 1998, ch. 428, § 16, eff from and after July 1, 1998.

§ 79-16-33. Fees.

The Secretary of State shall charge and collect from foreign business trust for:

(1) Filing a statement of change of address of registered office or change of registered agent, or both, Twenty-five Dollars (\$25.00);

(2) Filing an application of a foreign business trust for a certificate of authority to transact business in this state and issuing a certificate of authority, Two Hundred Fifty Dollars (\$250.00);

(3) Filing a certificate of correction or amendment of a foreign business trust authorized to transact business in this state, Fifty Dollars (\$50.00);

(4) Filing an application for withdrawal of a foreign business trust and issuing a certificate of withdrawal, Twenty-five Dollars (\$25.00);

(5) Filing any other statement or report of a foreign business trust, Twenty-five Dollars (\$25.00);

(6) For furnishing a certified copy of any document, instrument or paper relating to a foreign business trust, One Dollar (\$1.00) per page and Ten Dollars (\$10.00) for the certificate and affixing the seal thereto; and

(7) At the time of any service of process on him as resident agent of a foreign business trust, Twenty-five Dollars (\$25.00), which amount may be recovered as taxable cost by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SOURCES: Laws, 1998, ch. 428, § 17, eff from and after July 1, 1998.

§ 79-16-35. Laws applicable to foreign business trust previously transacting business in this state.

(1) Foreign business trusts which are transacting business in this state at the time this law takes effect, for a purpose or purposes for which a foreign business trust might secure such authority under said law, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign business trusts procuring certificates of authority to transact business, and such foreign business trusts shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign business trusts procuring certificates of authority to transact business in this state.

(2) Within one (1) year from July 1, 1998, all foreign business trust transacting business within the state at the time said chapter takes effect shall

secure a certificate of authority or be subject to the penalties, restrictions and limitations otherwise herein provided.

SOURCES: Laws, 1998, ch. 428, § 18, eff from and after July 1, 1998.

CHAPTER 17

Agricultural Associations; Conversion to Corporate Form

SEC.

- 79-17-1. Agriculture classified as primary industry.
- 79-17-3. A supplementary law.
- 79-17-5. How may be cited.
- 79-17-7. Purposes.
- 79-17-9. Name of associations incorporated hereunder.
- 79-17-11. Unlawful use of the words "farm bureau."
- 79-17-13. How associations may be formed.
- 79-17-15. Organization, officers, bylaws.
- 79-17-17. Board of directors to control affairs.
- 79-17-19. Voting by mail, dues and fees.
- 79-17-21. Membership nontransferable.
- 79-17-23. Associations with capital stock, etc.
- 79-17-25. Powers of association.
- 79-17-27. Charges for expenses and creating reserve.
- 79-17-29. Certain suits authorized.
- 79-17-31. Associations may federate.
- 79-17-33. How federation managed.
- 79-17-35. "Producers" defined.
- 79-17-37. Powers of federation.
- 79-17-39. "Agricultural products" defined.
- 79-17-41. Conversion to corporate form of organization.

§ 79-17-1. Agriculture classified as primary industry.

Agriculture is the primary industry in the State of Mississippi, and it is in the interest of said state and its inhabitants that agriculture be classified in the manner and for the purposes herein set forth.

SOURCES: Codes, 1930, § 4080; 1942, § 4475; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

Cross References — Agricultural exemptions from sales tax, see § 27-65-103.
State regulation of agriculture, horticulture and animals, see §§ 69-1-1 et seq.
Regulation of markets and marketing, see §§ 69-7-101 et seq.
Agricultural cooperative marketing associations, see §§ 79-19-1 et seq.
Cooperative aquatic products marketing associations, see §§ 79-21-1 et seq.
Agricultural credit corporations, see §§ 81-15-1 et seq.

RESEARCH REFERENCES

ALR. Liability of member or former member of marketing or purchasing cooperative for its debts or losses. 96 A.L.R.3d 1243.

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 1 et seq.
CJS. 3 C.J.S., Agriculture § 151.

§ 79-17-3. A supplementary law.

This chapter is supplementary of and not amendatory or in alteration of any other laws for the accomplishment of any of the purposes herein set forth, and shall apply only to organizations created and operating hereunder.

SOURCES: Codes, 1930, § 4081; 1942, § 4476; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

§ 79-17-5. How may be cited.

This chapter shall be known as the "Agricultural Association Law," and may be cited as such and may be abbreviated as "A.A.L."

SOURCES: Codes, 1930, § 4082; 1942, § 4477; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

§ 79-17-7. Purposes.

The purposes of this chapter are to promote the general welfare of agriculture; to enable producers of agricultural products whether in the State of Mississippi or not to co-operate in the productions, processing, packing, distribution, financing and marketing of agricultural products, and the elimination of speculation and waste therein; to enable such producers to organize incorporated associations with or without capital stock and not for profit but for service to their members by the organization and operation of such corporations by a simplified and inexpensive procedure for the promotion and accomplishment of such co-operation and the general welfare of agriculture.

SOURCES: Codes, 1930, § 4083; 1942, § 4478; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

Cross References — Regulation of markets and marketing, see §§ 69-7-101 et seq.
Effect of antitrust laws on agricultural organizations, see § 75-21-5.
Farm warehouses, see §§ 75-43-1 et seq.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 4.
5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:8-71:11.

CJS. 3 C.J.S., Agriculture § 151.
18 C.J.S., Corporations § 65.

§ 79-17-9. Name of associations incorporated hereunder.

Any such incorporated association shall have a distinctive name, the concluding part of which shall be "A.A.L." in parentheses; and no organization not created under this chapter, whether incorporated or unincorporated, shall use or have as a part of its name or title the letters "A.A.L." When any federation shall be organized under this chapter, and shall have adopted as a part of its name any distinctive words which are indicative of its field of

service, such as the words “farm bureau,” no person, firm, corporation or association shall be entitled to use such words as a part of its name unless it be a member of such federation; and if any member thereof shall cease to be a member, it shall thereupon be required to change its name so as to eliminate the use of such words therein.

SOURCES: Codes, 1930, § 4084; 1942, § 4479; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

Cross References — Unlawful use of the words “farm bureau” see § 79-17-11.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 5.

CJS. 7 C.J.S., Associations § 73.

§ 79-17-11. Unlawful use of the words “farm bureau.”

(1) The use of the words “farm bureau” by any person, firm, partnership, association, corporation, or other business enterprise doing business in the State of Mississippi, except by the Mississippi Farm Bureau Federation or its subsidiaries or affiliate associations, shall be unlawful.

(2) The use of the words “farm bureau,” either preceded by or followed by the name of any state, county, or town or by any word designating a product, service, activity, or enterprise in the State of Mississippi shall be unlawful; provided, however, this shall not limit nor affect the right of the Mississippi Farm Bureau Federation, or any of its affiliate associations, in the free use of such words.

(3) The Mississippi Farm Bureau Federation may authorize its affiliate or associate organizations, services, or activities to use the words “farm bureau” by resolution duly adopted and spread upon the minutes of its board of directors, a certified copy of which shall be filed with the secretary of state before such words shall be used by any other than the Mississippi Farm Bureau Federation.

(4) Any person, firm, partnership, association, or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, fined not less than one hundred dollars (\$100.00) or imprisoned in the county jail not exceeding six (6) months, or both.

SOURCES: Codes, 1942, § 4479-01; Laws, 1946, ch. 213, §§ 1-4.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 79-17-13. How associations may be formed.

Three (3) or more producers of agricultural products in the State of Mississippi who may desire that they, their associates, and successors shall

come under this chapter and enjoy its benefits may enter into articles of association and incorporation, which shall set forth the name of the organization, the period of its existence (which shall be for not more than ninety-nine (99) years), its domicile, and that it is to be organized and operated under this chapter. Such articles shall be in duplicate and signed and acknowledged by all those named therein and filed with the Secretary of State of Mississippi. Upon the receipt of Twenty-five Dollars (\$25.00) as a recording fee, the Secretary of State shall file both of said copies, endorsing thereon over his official signature the filing and the date thereof. Thereupon and by such filing and indorsement, said association described in the said articles shall be and become a complete and valid corporation without capital stock and without individual liability on the part of the organizers, their associates and successors, who may become members of such incorporated association, or on the part of the directors and officers of such organization, notwithstanding indebtedness be incurred by said corporation and it be without capital stock. Such articles when so filed shall be the charter of such corporation. Upon the filing and endorsement of the articles as aforesaid, the Secretary of State shall return one (1) of said copies of said articles to said corporation, which shall have the same recorded in the record of charters in the office of the clerk of the chancery court of the county in which the principal office or place of business of such corporation is located, and the Secretary of State shall retain the other copy of said articles for his files and record it and said endorsements thereon in the records of charters in his office. Such articles may be amended by the same procedure except that the proposed amendment shall be signed by two (2) executive officers, only after authority given by the vote of a majority of the members present at any membership meeting duly called and held; provided, however, that notice of such meeting and a statement of the substance of the proposed amendment to the articles of association and incorporation shall be mailed or delivered by hand to all members of the incorporated association at least fifteen (15) days prior to the date of such meeting. The recording fee for an amendment to such articles shall be Twenty Dollars (\$20.00).

SOURCES: Codes, 1930, § 4085; 1942, § 4480; Laws, 1928, ch. 295; Laws, 1930, ch. 109; Laws, 1958, ch. 204; Laws, 1964, ch. 256; Laws, 2004, ch. 422, § 1, eff from and after July 1, 2004.

Cross References — Secretary of State, see §§ 7-3-1 et seq.

Duty of chancery court clerk to keep records, see § 9-5-137.

Recording of instruments by chancery court clerk, see § 89-5-25.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13-15.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:6 et seq. 71:40 et seq.

CJS. 3 C.J.S., Agriculture § 152.

7 C.J.S., Associations §§ 7, 12, 14-16.

18 C.J.S., Corporations §§ 43, 65.

§ 79-17-15. Organization, officers, bylaws.

A majority of the organizing members named in the articles, at a time and place agreed upon in writing by all of the said organizers or when and where all are present or upon call of a majority of such organizers and upon five (5) days' notice thereof in writing giving the time, place and purposes of the meeting by United States mail or delivery by hand to all of the others of said organizing members, may make permanent organization of such corporation and adopt bylaws for the same and elect the members of the board of directors and such officers as under the bylaws may be elected by the members. The bylaws so adopted may be amended by the vote of a majority of the members present at any membership meeting duly called and held; provided, however, notice of such meeting and a statement of the substance of the proposed bylaw amendment shall be mailed or delivered by hand to all members of the incorporated association at least fifteen (15) days prior to the date of such meeting.

SOURCES: Codes, 1930, § 4086; 1942, § 4481; Laws, 1928, ch. 295; Laws, 1930, ch. 109; Laws, 1964, ch. 257, eff from and after passage (approved March 11, 1964).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13-15.	tive Associations §§ 71:16 et seq., 71:45 et seq., 71:91.
5B Am. Jur. Legal Forms 2d, Coopera-	CJS. 7 C.J.S., Associations § 7.

§ 79-17-17. Board of directors to control affairs.

The affairs of such incorporated association shall be conducted, controlled and managed by a board of directors of such number and with such terms of office as may be provided by the bylaws.

SOURCES: Codes, 1930, § 4087; 1942, § 4482; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 16, 17.	tive Associations, §§ 71:45 et seq., 71:54 et seq., 71:87 et seq.
5B Am. Jur. Legal Forms 2d, Coopera-	CJS. 7 C.J.S., Associations §§ 21-26.

§ 79-17-19. Voting by mail, dues and fees.

The bylaws may provide among other things for voting of the members by mail and for membership fees and dues, and shall provide how membership in the incorporated association may be acquired and lost.

SOURCES: Codes, 1930, § 4088; 1942, § 4483; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 14, 18. **CJS.** 7 C.J.S., Associations §§ 62, 64, 66.
 5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:28 et seq.

§ 79-17-21. **Membership nontransferable.**

All memberships shall be personal to the member and equal in right, and shall not be transferable, assignable, vendible, inheritable, devisable, or seizable; and each member shall have one (1) vote only.

SOURCES: Codes, 1930, § 4089; 1942, § 4484; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 18, 21. **5B Am. Jur. Legal Forms 2d,** Cooperative Associations § 71:118.

§ 79-17-23. **Associations with capital stock, etc.**

Such incorporated association may be organized with capital stock at the option of the organizers; and it shall in that event be organized by the same method and for the same recording fee as in the case of those associations organized without capital stock, except that the articles of association shall set forth also that the association is organized with capital stock, and the amount of capital stock authorized, with particulars as to the class or classes thereof, and the par value of shares. There shall be no individual liability on the part of the shareholders, members, officers, or directors.

Such association may begin business whenever as many as ten (10) members shall have paid for one (1) or more shares of stock each. The articles of association may provide for preferred stock as well as common stock; but all shares shall have a definite par value, and all shares of the same class shall have the same par value. No stock shall be issued until it shall be paid for in cash or in property or services fairly equal in value to its par value.

Common stock and preferred stock enjoying voting rights shall be issued only to, and held by, producers of agricultural products who make use of the services and facilities of the association, or agricultural associations, organizations, federations or corporations organized under this chapter, or whose purposes and operations are in harmony with the purposes of this chapter. But the articles of association may limit the ownership of common stock and preferred stock enjoying voting rights to such producers of agricultural products. Dividends upon the capital stock, common or preferred, shall not be declared or paid in excess of eight percent (8%) per annum. Each share of stock shall entitle the holder thereof to one (1) vote in the management of the association; provided, however, if authorized by the articles of incorporation and association, classes of preferred stock may be issued without voting rights.

Shares of nonvoting preferred stock may be issued to any party, whether or not such party is a producer eligible to own common stock or preferred stock which enjoys voting rights. Shares of common stock or of preferred stock which enjoys voting rights shall not be transferable except to producers of agricultural products or organizations to whom they could be issued, and no person shall acquire them by operation of law. If any shareholder of common stock or of preferred stock enjoying voting rights shall cease to be eligible to hold such shares, or shall die, or shall be dissolved, and if such shares be not promptly transferred to some producer or organization eligible to hold the same, the association shall take up such shares at par value or, at the option of the association, at appraised value, such value to be conclusively fixed by the board of directors of the association, and the association may pay therefor in cash or by certificate of indebtedness to be thereafter paid from the income of the association.

All shareholders shall be members of the association, but there may also be members who are not shareholders. Such additional members shall have no vote in the management of the association; but they shall be entitled to all other benefits of the association equally with members who are shareholders, as if it were organized without capital stock, except that they shall have no right to stock dividends.

If any shareholder shall attempt to transfer his shares, except as permitted, such shares may, at the option of the association, be taken up as in case of the death of a shareholder.

Upon the dissolution of the association, any assets remaining after the payment of debts and the retiring of outstanding stock at par value shall be distributed in the manner provided in the bylaws of the incorporated association.

SOURCES: Codes, 1930, § 4090; 1942, § 4485; Laws, 1930, ch. 109; Laws, 1964, ch. 258, eff from and after passage (approved March 11, 1964).

JUDICIAL DECISIONS

1. In general.
2. Rights of shareholder.

1. In general.

An incorporated agricultural association has absolute duty of taking up and paying, at its par value only, the stock of a shareholder who has ceased to be a producer of agricultural products and who is unable to transfer such stock to some other producer, although the association may pay for such stock by issuing its certificate of indebtedness payable out of future earnings or income. *Avon Gin Co. v. Bond*, 198 Miss. 197, 22 So. 2d 362 (1945).

2. Rights of shareholder.

Rights of shareholder in a corporate agricultural association are controlled by the law under which the association is organized which must be read into his contract of purchase of the stock, and, upon becoming a member of the association, he is charged with notice of the law pertaining thereto. *Avon Gin Co. v. Bond*, 198 Miss. 197, 22 So. 2d 362 (1945).

Shareholder of capital stock in an incorporated agricultural association, upon becoming ineligible to hold stock by reason of fact that he is no longer a producer of agricultural products and who is unable to

sell or transfer his stock to another eligible producer or organization, is entitled to be paid by the association only the par value of his stock, which may be paid by association's certificate of indebtedness payable out of future earnings, and not the amount representing the proportion that his shares bear to the present assets

of the association, even though such amount may be greater than the par value of the shares, and such does not deprive the shareholder of property without due process of law in violation of the constitution. *Avon Gin Co. v. Bond*, 198 Miss. 197, 22 So. 2d 362 (1945).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 21.

5B Am. Jur. Legal Forms 2d, Coopera-

tive Associations §§ 71:10, 71:68, 71:94, 71:95.

CJS. 18 C.J.S., Corporations § 43.

§ 79-17-25. Powers of association.

Such incorporated association shall have the power to contract and be contracted with, borrow and lend money, issue notes, bonds and other obligations, and secure the payment of the same by mortgage or otherwise, contract for, own, sell, convey, pledge, mortgage, buy and otherwise have, use, and dispose of property of all kinds not prohibited by law; to promote and carry out the purposes of this chapter, to grow and market the agricultural products of its members, cooperatively in pools and otherwise, and collect for the same, to purchase such products from its members; to advance money upon such products to its members, to act as agent for its members, to process, condition, pack, store, and otherwise safeguard, care for, and make ready for market the agricultural products of its members, to purchase for the distribution to its members, and purchase for and sell to its members, seed, plants, fertilizer, machinery, necessary fuel, implements, livestock, feed, chemicals, foodstuff, materials, supplies, packages, containers, wrapping, labels, tags, and any other products, wares, merchandise, and any and all other commodities necessary or useful in the production, processing, packing, storage, distributing and marketing of agricultural products, and beautifying and making more attractive and comfortable home and farm properties; and in the growing, distributing, transporting and marketing of agricultural products, electric light poles, cross arms, fruit trees, ornamental shrubs and plants, and any and all material, commodities or supplies necessary or useful in the growing, transporting, distributing, marketing, and processing farm products, and in extending, encouraging, and cooperating with the Tennessee Valley Association in the promotion of agricultural pursuits, and in locating, aiding and encouraging manufacturing enterprises, and the improving of agricultural communities and conditions of the state; to erect, buy, own, rent, operate, manage or control all plants, properties, machinery, supplies, materials, commodities and installations necessary or useful in processing, conditioning, packing, manufacturing, storing, shipping, distributing, transporting, marketing and producing such products, and in aiding and encouraging the locating, promoting and supplying of manufacturing enterprises, and for the beautifying and making more comfortable and attractive home and farm properties,

and in assisting, extending, and cooperating with the Tennessee Valley Authority in the distribution and sale of electrical supplies of all kinds and character.

Any provision of any law which otherwise would be in conflict with this chapter, or with the powers herein conferred, shall not be construed as applying to the associations herein provided for; and all laws heretofore or hereafter enacted in conflict with any of the provisions hereof shall be construed as not applying to associations of this character, if to construe otherwise would tend to limit, restrict, prohibit, or penalize the associations herein authorized to be organized. Provided, that such interpretation and construction shall be strictly limited to bona fide cooperative associations, and that nothing herein contained is intended nor shall be construed so as to permit any person, firm and/or corporation to engage in any business for the personal profit and gain of said person, firm and/or corporation and not as a strictly cooperative association, and escape liability for taxes or other legal exactions by assuming or claiming the form or guise of a cooperative association.

Any association heretofore or hereafter organized under the provisions of Chapters 17, 19, and 21 of Title 79, Mississippi Code of 1972, is hereby authorized and empowered to organize and operate such branch associations as it may deem necessary or useful in carrying out the purposes of this chapter. Such branch associations shall be located at such places as the directors may deem proper, and shall be under the supervision, control and management of the officers and directors of the parent association; and members of such branch associations may or may not be shareholders, but all members of branch associations shall be entitled to the same benefits and privileges as are permitted and enjoyed by members of the parent association.

In addition to the foregoing, the articles of incorporation of any association incorporated hereunder may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement, and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate or with respect to its members, officers or directors and any other provisions relative to its affairs.

The powers herein granted shall be possessed by an association or federation organized hereunder fully and completely, whether specified in the articles of association or not, unless expressly eliminated by the articles of association.

Such incorporated association may render the services mentioned in this section to producers of agricultural products who are not members thereof as well as to members, provided that no such incorporated association shall deal in the agricultural products of nonmembers to an amount greater in value than such as are handled by it for members, and that no such incorporated association shall purchase supplies and equipment for nonmembers in an amount greater in value than such as are purchased for members.

Whenever such incorporated association shall market the products of, purchase supplies or equipment for, or render other services to nonmembers, such nonmember patrons shall be treated on the same basis as members in that the same charges and deductions shall be made against them as against members for like services, and that they shall be entitled to receive patronage dividends and distributions equally with members on account of like services rendered by such association to them during the period of time for which such patronage dividends or distributions are made, but as to nonmembers such patronage dividends and distributions may be paid as a credit toward the purchase of stock or the payment of a membership fee, at the option of such association.

SOURCES: Codes, 1930, § 4091; 1942, § 4486; Laws, 1928, ch. 295; Laws, 1930, ch. 109; Laws, 1934, ch. 289; Laws, 1964, ch. 259, eff from and after passage (approved March 26, 1964).

Cross References — Regulation of markets and marketing, see §§ 69-7-101 et seq. Electric power associations, see §§ 77-5-201 et seq.

RESEARCH REFERENCES

ALR. Validity and construction of provision for liquidated damages in contract with co-operative marketing association. 12 A.L.R.2d 130.

Co-operative associations: rights in equity credits or patronage dividends. 50 A.L.R.3d 435.

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 26-28.

5B Am. Jur. Legal Forms 2d, Cooperative Associations, §§ 71:54 et seq., 71:76 et seq., 71:102 et seq..

CJS. 3 C.J.S., Agriculture §§ 153-155. 7 C.J.S., Associations §§ 71, 72 et seq.

§ 79-17-27. Charges for expenses and creating reserve.

Such incorporated association may make charges to its members and deductions from the proceeds of their products for services rendered to them for the purpose of paying the expenses of operation and the maintenance and development of such association, and for the creation and maintenance of reserves for the purpose of paying expenses, retiring obligations, acquiring, maintaining and operating property necessary or useful in carrying out the purposes of this chapter and for caring for contingencies, and such reserves may be used or distributed as may be deemed proper by the board of directors under the bylaws; and such corporation may make patronage dividends or distributions to its members and may do any and all things not unlawful in carrying out the purposes of this chapter, and shall have and enjoy all the rights, privileges and immunities of other corporations not inconsistent with this chapter.

SOURCES: Codes, 1930, § 4092; 1942, § 4487; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

RESEARCH REFERENCES

ALR. Construction and effect of co-operative farm or dairy products agreement with respect to association's charges and deductions for gathering, grading, processing, shipping and marketing the products. 90 A.L.R.2d 1142.

Co-operative associations: rights in equity credits or patronage dividends. 50 A.L.R.3d 435.

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 20, 35, 39.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:59, 71:61.

7 Am. Jur. Pl & Pr Forms (Rev), Cooperative Associations, Form 3.

CJS. 7 C.J.S., Associations §§ 61, 62, 64.

§ 79-17-29. Certain suits authorized.

Such incorporated association may sue and be sued; and may collect, sue for and realize on claims for the purchase money of products sold by it for its members and/or nonmembers, and on claims for freight overcharges on, and for loss and damage to, shipments made by it for its members and/or nonmembers, for the use and benefit of such persons.

SOURCES: Codes, 1930, § 4093; 1942, § 4488; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

JUDICIAL DECISIONS

1. In general.

A patron of a co-operative may not set off equity credits to him on its books

against a debt presently due. *Clarke County Coop. v. Read*, 243 Miss. 879, 139 So. 2d 639 (1962).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 42 et seq.

7 Am. Jur. Pl & Pr Forms (Rev), Cooperative Associations, Forms 3, 11, 12, 21.

CJS. 7 C.J.S., Associations §§ 88 et seq.

§ 79-17-31. Associations may federate.

Such associations incorporated hereunder may, in carrying out their purposes, become members of and enjoy the facilities and co-operation of any federation whose members are agricultural societies, organizations or associations, whose purposes and operations are in any way promotive of and not inconsistent with the purposes of this chapter.

SOURCES: Codes, 1930, § 4094; 1942, § 4489; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

§ 79-17-33. How federation managed.

Five (5) or more associations or corporations organized under this chapter, or whose purposes and operations are in any way promotive of, and not inconsistent with, the purposes of this chapter, whether incorporated hereun-

der or not, may organize and incorporate a federation of such incorporated associations as members thereof. Such incorporated federation shall be managed by a board of directors to be composed of representatives of such constituent member associations. The articles of association and incorporation for such federation shall contain the names of the constituent member associations, and the signatures and acknowledgments thereto shall be by an executive officer of each of the constituent associations; and the other procedure and details of incorporation shall be the same as herein provided for the incorporation of the constituent incorporated associations. The organization meeting and adoption of bylaws shall be by representatives chosen by the respective constituent members for that purpose, one (1) for each member. In the organization and management of such federation each constituent member shall be entitled to one (1) vote only, and if any constituent member has more than one (1) representative as members of the board of directors of said federation, such representatives as directors shall jointly have one (1) vote only, it being intended that such a federation may be incorporated hereunder as aforesaid for the purposes and with all the rights and powers herein given to associations of producers of agricultural products hereunder. After such federation has been organized and incorporated as provided herein, agricultural societies, organizations, associations or corporations, whose purposes and operations are in any way promotive of, and not inconsistent with, the purposes of this chapter, whether incorporated under this chapter or not, may become members of such federation, and are accepted by the federation; and any such federation may limit its membership to associations incorporated under this chapter.

Such federation may be organized with capital stock at the option of the organizing associations, and in that event the provisions of this chapter applying to capital stock organization of incorporated associations shall apply also to such federation, but in addition the common stock thereof shall be owned only by member associations. And the management shall be vested in a board of directors of such number as the bylaws may provide, elected by the shareholders. Such federation may begin business as soon as the organizing associations have paid for at least one (1) share of stock each.

The representatives of the member associations in the case of non-stock federations, and the directors of capital stock federations, need not be producers of agricultural products, shareholders or members of the constituent members.

SOURCES: Codes, 1930, § 4095; 1942, § 4490; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

Cross References — Producers of agricultural products defined, see § 79-17-35. Agricultural products defined, see § 79-17-39.

§ 79-17-35. "Producers" defined.

Producers of agricultural products herein mentioned shall include individual persons, partnerships, associations and corporations who produce such products either directly or as landlords, tenants or share-croppers.

SOURCES: Codes, 1930, § 4096; 1942, § 4491; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

Cross References — Agricultural products defined, see § 79-17-39.

§ 79-17-37. Powers of federation.

Any such federation incorporated hereunder for the purpose of carrying out the purposes of this chapter and the rendition of services to its constituent members and their members shall have all the rights, powers, privileges and immunities herein given its constituent members as an incorporated association hereunder. The members of the constituent members of such federation shall be treated as members of the federation to the extent that services rendered to them by the federation shall be considered to be rendered to its own members.

Each incorporated association or federation organized hereunder shall be exempt from the payment of income and franchise taxes, and shall be exempt from the payment of sales taxes on all agricultural products and products of the farm, grove, or garden grown in Mississippi. All exemptions applying to agricultural products grown in Mississippi in the possession or under the control of the producer shall apply similarly and completely to such products when delivered by the producer to such association or federation, and while in its possession or under its control or owner of it.

All shares of stock in any federation or association organized under this chapter shall be exempt from ad valorem taxation. Dividends or other net earnings paid to the holders of such stock, or to members of such federation or association, however, shall not be exempt from income taxation in the hands of such shareholder or member.

SOURCES: Codes, 1930, § 4097; 1942, § 4492; Laws, 1930, ch. 109; Laws, 1936, ch. 328; Laws, 1940, ch. 126; Laws, 1944, ch. 136; Laws, 1954, ch. 151, § 1, eff May 1, 1954.

Cross References — Producers of agricultural products defined, see § 79-17-35
Agricultural products defined, see § 79-17-39.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 26-28.

CJS. 3 C.J.S., Agriculture §§ 153-155.
7 C.J.S., Associations §§ 71, 72 et seq.

§ 79-17-39. "Agricultural products" defined.

Agricultural products as herein defined shall include the products of field, pasture, meadow and garden, and fruits, melons, berries, nuts and vegetables, live stock, poultry and poultry products, dairy products and all other things commonly known as agricultural products.

SOURCES: Codes, 1930, § 4098; 1942, § 4493; Laws, 1928, ch. 295; Laws, 1930, ch. 109.

Cross References — Definition of agricultural products under Cooperative Marketing Law, see § 79-19-3.

§ 79-17-41. Conversion to corporate form of organization.

(1) Any cooperative association, heretofore or hereafter organized with capital stock under Chapters 17, 19 and 21, Title 79, Mississippi Code of 1972, may, by amendment to its articles of association and incorporation, change its corporate name and form of organization from the cooperative name and form to the corporate form of organization as provided by the Mississippi Business Corporation Law, being Sections 79-3-1 through 79-3-293, Mississippi Code of 1972, as existing or hereafter amended, and such change shall be made in the manner hereinafter provided. In the event of such amendment said cooperative association shall thereafter be entitled to all of the benefits and be subject to all of the provisions of the Mississippi Business Corporation Law, being Sections 79-3-1 through 79-3-293, Mississippi Code of 1972, as existing or hereafter amended.

(2) Any amendment to the articles of association and incorporation of associations as provided in subsection 1 hereof must first be approved by a vote of not less than two-thirds ($\frac{2}{3}$) of all the members of the board of directors. Such proposed amendment shall then be submitted to either a regular or a special meeting of the shareholders of the association, and its adoption shall require a vote of the holders of the majority of each class of stock. Absent holders of stock may vote at such meeting on such proposed amendment either in writing or by proxy. Amendments to the articles of association and incorporation when so adopted shall be certified to by the president and the secretary of the association and shall be filed with the secretary of state. Upon receipt of such amendment by the secretary of state, it shall be dealt with in the same manner and shall be subject to the same laws and regulations governing the filing, approval, recordation and publication of original charters of incorporation as provided under the Mississippi Business Corporation Law, being Sections 79-3-1 through 79-3-293, Mississippi Code of 1972, as existing or hereafter amended. Said amendment shall be recorded in the manner provided by and subject to the other provisions of the Mississippi Business Corporation Law, being Sections 79-3-1 through 79-3-293, Mississippi Code of 1972, as existing or hereafter amended.

(3) Any proposed amendment as provided for under this section shall state, among other things, that one of the purposes and effects of said

amendment is to change the form of organization of said cooperative association from the cooperative form, as provided by Chapters 17, 19, and 21, Title 79, Mississippi Code of 1972, to the corporate form as provided by the Mississippi Business Corporation Law, being Sections 79-3-1 through 79-3-293, Mississippi Code of 1972, as existing or hereafter amended.

(4) This section shall not repeal other provisions of law pertaining to the securing of amendments to articles of association and incorporation of associations organized under Chapters 17, 19, and 21, Title 79, Mississippi Code of 1972, but shall be supplemental thereto; provided, however, such present provisions of law shall in no way be construed to prohibit or limit the exercise of the authority herein granted.

SOURCES: Codes, 1942, § 4535.5; Laws, 1950, ch. 311, §§ 1-4; Laws, 1964, ch. 264, eff from and after passage (approved April 15, 1964).

Editor's Note — Sections 79-3-1 through 79-3-293, referred to in this section were repealed by Laws, 1987, ch. 486, § 17.06, eff from and after January 1, 1988. For similar provisions, see §§ 79-4-1.01 et seq.

Cross References — Mississippi Business Corporation Act, see §§ 79-4-1.01 et seq.
Agricultural co-operative marketing associations, see §§ 79-19-1 et seq.
Aquatic products marketing associations, see §§ 79-21-1 et seq.

CHAPTER 19

Agricultural Cooperative Marketing Associations

SEC.	
79-19-1.	Declaration of policy.
79-19-3.	Definitions; nature of associations; short title.
79-19-5.	Who may organize.
79-19-7.	Purposes.
79-19-9.	Powers.
79-19-11.	Members.
79-19-13.	Articles of association.
79-19-15.	Amendments to articles of association.
79-19-17.	Bylaws.
79-19-19.	General and special meetings, how called.
79-19-21.	Directors; election.
79-19-23.	Election of officers.
79-19-25.	Stock, membership certificates, when issued; voting; liability; limitations on transfer and ownership.
79-19-27.	Removal of officer or director.
79-19-29.	Referendum may be had in certain cases.
79-19-31.	Marketing contract.
79-19-33.	Remedies for breach of contract or bylaws.
79-19-35.	Purchasing business of other associations, persons, firms or corporations; payment; stock issued.
79-19-37.	Conflicting laws not to apply.
79-19-39.	Limitation of the use of term "cooperative."
79-19-41.	Interest in other corporations or associations.
79-19-43.	Contracts and agreements with other associations.
79-19-45.	Association heretofore organized may adopt the provisions of this chapter.
79-19-47.	How associations organized in another state may carry on business in this state.
79-19-49.	Misdemeanor; breach of marketing contract of cooperative association; spreading false reports about the finances or management thereof.
79-19-51.	Associations not in restraint of trade.
79-19-53.	Exemptions.
79-19-55.	Filing fees.
79-19-57.	Cooperative marketing associations may maintain replevin.
79-19-59.	Liquidated damages may be recovered.
79-19-61.	Loan limited to 50 percent of capital and surplus.
79-19-63.	Stock in bank for cooperatives.

§ 79-19-1. Declaration of policy.

It is the purpose of this chapter to promote, foster and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and to stabilize the marketing of agricultural products; and to promote, foster and encourage the live stock and poultry industry.

SOURCES: Codes, 1930, § 4099; 1942, § 4494; Laws, 1922, ch. 179; Laws, 1930, ch. 10.

Cross References — Regulation of markets and marketing, see §§ 69-7-101 et seq.

Effect of antitrust laws on agricultural organizations, see § 75-21-5.

Definition of cooperative association under Milk Processor's Regulation Act of 1988, see § 75-31-503.

Agricultural cooperative associations, see §§ 79-17-1 et seq.

Authority of any association organized under provisions of this Chapter and Chapters 17 and 21 to organize and operate branch associations, see § 79-17-25.

Applicability of general cooperative marketing associations law to cooperative aquatic products marketing associations, see § 79-21-19.

Applicability of this chapter to associations organized under the provisions of §§ 79-21-67, see § 79-21-67.

RESEARCH REFERENCES

Am Jur. 3 Am. Jur. 2d, Agriculture § 51. **CJS.** 3 C.J.S., Agriculture §§ 164.

18 Am. Jur. 2d, Cooperative Associations §§ 1 et seq.

§ 79-19-3. Definitions; nature of associations; short title.

As used in this chapter:

(a) The term "agricultural product" shall include horticultural, viticultural, forestry, dairy, live stock, poultry, bee and any other farm products;

(b) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

(c) The term "association" means any association organized under this chapter; and

(d) The term "person" shall include individuals, firms, partnerships, corporations and associations.

Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

This chapter shall be referred to as the "Cooperative Marketing Law and Cooperative Live Stock and Poultry Raising Law."

SOURCES: Codes, 1930, § 4100; 1942, § 4495; Laws, 1922, ch. 179; Laws, 1930, ch. 10.

Cross References — Definition of cooperative association under Milk Processor's Regulation Act of 1988, see § 75-31-503.

Definition of agricultural products under Agricultural Association Law, see § 79-17-39.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 1. **CJS.** 3 C.J.S., Agriculture §§ 164, 165. 7 C.J.S., Associations §§ 1-5.

§ 79-19-5. Who may organize.

Twenty (20) or more persons, a majority of whom are residents of this state, engaged in the production of agricultural products may form a nonprofit, cooperative association, with or without capital stock, under the provisions of this chapter; provided, however, that for the formation of cooperative associations for growing, breeding, selling, and handling live stock or poultry, five (5) or more persons may form a cooperative association.

SOURCES: Codes, 1930, § 4101; 1942, § 4496; Laws, 1922, ch. 179; Laws, 1930, ch. 10.

Cross References — Agricultural products defined, see § 79-19-3.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13-15.

5B Am. Jur. Legal Forms 2d, Cooperative Associations, §§ 71:6, 71:7.

CJS. 3 C.J.S., Agriculture § 165.

7 C.J.S., Associations § 7.

§ 79-19-7. Purposes.

An association may be organized to engage in any activity in connection with the growing, breeding, handling, shipping, or utilization, or moving or marketing of the byproducts thereof of live stock and poultry of every description, and with the marketing or selling of agricultural products of it members, or with the harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the byproducts thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein.

SOURCES: Codes, 1930, § 4102; 1942, § 4497; Laws, 1922, ch. 179; Laws, 1930, ch. 10.

RESEARCH REFERENCES

ALR. Validity and construction of provision for liquidated damages in contract with cooperative marketing association. 12 A.L.R.2d 130.

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 4.

5B Am. Jur. Legal Forms 2d, Cooperative Associations, §§ 71:12-71:14.

CJS. 7 C.J.S., Associations §§ 1-5.

§ 79-19-9. Powers.

Each association incorporated hereunder shall have the following powers:

(a) To engage in any activity in connection with the growing, breeding, marketing, selling, or buying, or utilization of live stock and poultry of every description and the byproducts thereof, or with the marketing, selling, harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any agricultural product produced or delivered to it by its members; or the manufacturing or marketing of the byproducts thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No association shall handle the agricultural products of any nonmember, except as necessary and incidental to the handling of the products of members, and in any such case the value of products of nonmembers so handled shall not exceed the value of the products handled by the association for its members.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the capital stock or bonds of any corporation or association engaged in any related activity, or in the warehousing or handling or marketing of any of the products handled by the association.

(e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws.

(f) To buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.

(g) To do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes, or the attainment of any one or more of the objects herein enumerated, or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized, or to the activities in which it is engaged; and to do any such thing anywhere.

(h) To sue and be sued, and prosecute and be prosecuted to judgment and suit before any court; to contract and be contracted with.

SOURCES: Codes, 1930, § 4103; 1942, § 4498; Laws, 1922, ch. 179; Laws, 1930, ch. 10.

Cross References — For another section derived from same 1942 code section, see § 79-19-11.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 26-28.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:54 et seq., 71:76 et seq.

7 Am. Jur. Pl & Pr Forms (Rev), Cooperative Associations, Form 3.

CJS. 7 C.J.S., Associations §§ 71, 72 et seq.

§ 79-19-11. Members.

(1) Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock or certificate of membership, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crops raised in the leased premises. Certificate of membership and common stock shall not be transferable, and no person shall acquire the same by operation of law or otherwise, except as provided herein.

(2) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, manager, or member thereof, duly authorized in writing.

(3) One (1) association organized hereunder may become a member or stockholder of any other association or associations organized hereunder or whose purposes and operations are in harmony with the purposes of this chapter.

(4) The first meeting of persons at interest, unless otherwise provided for, may be called by notice published in some convenient newspaper at least five (5) days before the time appointed for the meeting, which notice shall be signed by one or more persons named in the articles of association; and the meeting when assembled may proceed to organize the association.

SOURCES: Codes, 1930, §§ 4103, 4104; 1942, §§ 4498, 4499; Laws, 1922, ch. 179; Laws, 1930, ch. 10; Laws, 1964, ch. 260, eff from and after passage (approved March 11, 1964).

JUDICIAL DECISIONS

1. In general.
2. Actions.
3. Estoppel.

1. In general.

Releasing certain members of the cooperative association, from operation of marketing agreement, is a breach of contract releasing other members from adhering thereto. *Staple Cotton Coop. Ass'n v. Borodofsky*, 143 Miss. 558, 108 So. 802 (1926).

2. Actions.

Bill by cotton grower against cooperative cotton association and an insurance company on a policy secured by the association as trustee and sales agent for itself and grower members, of whom plaintiff was one, held a bill for accounting with discovery as an incident thereto, and so not multifarious, though praying for alternative relief and alleging alternative liability. *Johnson v. Staple Cotton Coop. Ass'n*, 142 Miss. 312, 107 So. 2 (1926).

3. Estoppel.

Member is not estopped to assert right to cancel contract because he delivered cotton prior to bringing cross-bill for cancellation, where a cross-bill was filed im-

mediately upon learning of breach of the contract by the association. *Staple Cotton Coop. Ass'n v. Borodofsky*, 143 Miss. 558, 108 So. 802 (1926).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 14, 18 et seq.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:28 et seq., 91, 93 et seq, 118.

2 Am. Jur. Proof of Facts 147, Associations and Clubs.

CJS. 7 C.J.S., Associations §§ 38-40, 42 et seq.

§ 79-19-13. Articles of association.

Each association formed under this chapter must prepare and file articles of association, setting forth:

- (a) The name of the association.
- (b) The purposes for which it is formed.
- (c) The place where its principal business will be transacted.
- (d) The term for which it is to exist, not exceeding ninety-nine (99) years.

(e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which property right and interests, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This paragraph of the articles of association shall not be altered, amended, or repealed except by the written consent of the vote of three-fourths ($\frac{3}{4}$) of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided the articles of association must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and definite extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the laws of this state to take and certify acknowledgments, and shall be filed and recorded in the office of the secretary of state.

SOURCES: Codes, 1930, § 4105; 1942, § 4500; Laws, 1922, ch. 179; Laws, 1962, ch. 227, eff from and after passage (approved March 20, 1962).

Cross References — Secretary of state, see §§ 7-3-1 et seq.
Filing fees, see § 79-19-55.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13 et seq. **CJS.** 7 C.J.S., Associations § 12, 14-16.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:8 et seq.

§ 79-19-15. Amendments to articles of association.

Any amendment to the articles of association must first be approved by a vote of not less than two-thirds (2/3) of all the members of the board of directors. Such proposed amendment shall then be submitted to either a regular or a special meeting of the members of the association, and its adoption shall require a majority vote of all the members present at any membership meeting duly called and held; provided, however, that notice of such meeting and a statement of the substance of the proposed amendment shall be mailed or delivered by hand to all members of the association at least fifteen (15) days prior to the date of such meeting. Amendments to the articles of association when so adopted shall be certified to by the president and secretary of the association and shall be filed with the secretary of state. Such certification and filing shall be conclusive evidence of the validity of such amendment.

SOURCES: Codes, 1930, § 4106; 1942, § 4501; Laws, 1922, ch. 179; Laws, 1964, ch. 261, eff from and after passage (approved March 11, 1964).

Cross References — Conversion of co-operative marketing association to business corporation, see § 79-17-41.
Filing fees, see § 79-19-55.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 14.

CJS. 7 C.J.S., Associations § 12, 14-16.

§ 79-19-17. Bylaws.

Each association incorporated hereunder must, within thirty (30) days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted herein. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. The bylaws so adopted may be amended by the vote of a majority of the members present at any membership meeting duly called and held; provided, however, notice of such meeting and a statement of the substance of the proposed bylaw amendment shall be mailed or delivered by hand to all

members of the association at least fifteen (15) days prior to the date of such meeting. Each association under its bylaws may also provide for any or all of the following matters:

- (a) The time, place and manner of calling and conducting its meetings.
- (b) The number of stockholders or members constituting a quorum.
- (c) The right of members or stockholders to vote by proxy or by mail, or both, and the conditions, manner, form and effect of such votes.
- (d) The number of directors constituting a quorum.
- (e) The qualifications, and duties and term of office of directors and officers, time of their election and the mode and manner of giving notice thereof.
- (f) Penalties for violations of the bylaws.
- (g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.
- (h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for service rendered by the association to him; and the marketing contract between the association and its members or stockholders which every member or stockholder shall be required to sign.
- (i) The qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, and the association may pay therefor in cash or by certificate of indebtedness to be thereafter paid from the income of the association.

SOURCES: Codes, 1930, § 4107; 1942, § 4502; Laws, 1922, ch. 179; Laws, 1964, ch. 262, eff from and after passage (approved March 11, 1964).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13 et seq.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:20 et seq.

CJS. 7 C.J.S., Associations §§ 12, 14-16.

§ 79-19-19. General and special meetings, how called.

In its bylaws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten percent (10%) of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten (10) days prior to the meeting; provided, however, that the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association.

SOURCES: Codes, 1930, § 4108; 1942, § 4503; Laws, 1922, ch. 179.

RESEARCH REFERENCES

CJS. 7 C.J.S., Associations §§ 17-20.

§ 79-19-21. Directors; election.

The affairs of the association shall be managed by a board of not less than five (5) directors, elected by the members or stockholders from their own number and shall have all rights and powers as provided for under the general corporation laws of this state, and such other powers as may be necessary to the proper execution of provisions of this chapter. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts and the result of all such primary elections must be ratified by the next regular meeting of the association or may be considered final as to the association.

The bylaws may provide that one or more directors may be appointed by the president of Mississippi State University of Agriculture and Applied Science or such other public official, commission, association or board as may be indicated by such bylaws. Such directors shall represent primarily the interest of the general public in such associations. The director or directors so appointed need not be members or stockholders of the association, but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth (1/5) of the entire number of directors.

The directors of an association may provide a fair remuneration for the time actually spent by its officers, directors and employees in its service. No

director, during the term of his office, shall be a party to a contract for profit with the association, differing in any way from the business relations accorded regular members or holders of common stock of the association.

The bylaws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy unless the bylaws provide for an election of directors by districts. In such a case the board of directors shall immediately call a special election to be voted in by the members or stockholders in that district to fill the vacancy.

SOURCES: Codes, 1930, § 4109; 1942, § 4504; Laws, 1922, ch. 179.

JUDICIAL DECISIONS

1. In general.

There was no contract by a director "differing in any way from the business relations accorded regular members" where an association director negotiated directly with a buyer a type of contract permissible for any member and where

the association, which acted only as a marketing agent, received its usual fee for its marketing services. *Campbell v. Staple Cotton Coop. Ass'n*, 334 So. 2d 378 (Miss. 1976), cert. denied, 429 U.S. 1074, 97 S. Ct. 813, 50 L. Ed. 2d 792 (1977).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 16, 17.

5B Am. Jur. Legal Forms 2d, Cooperative Associations, §§ 71:45 et seq.

CJS. 7 C.J.S., Associations §§ 21, 22 et seq.

§ 79-19-23. Election of officers.

The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer, who need not be directors or members of the association, and they may combine the two (2) latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

SOURCES: Codes, 1930, § 4110; 1942, § 4505; Laws, 1922, ch. 179.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 16, 17.

5B Am. Jur. Legal Forms 2d, Cooperative Associations, §§ 71:45 et seq.

CJS. 7 C.J.S., Associations §§ 21, 22 et seq.

§ 79-19-25. Stock, membership certificates, when issued; voting; liability; limitations on transfer and ownership.

When a member of an association established without capital stock has paid his membership fee in full he shall receive a certificate of membership.

No association shall issue stock to a member until it has been fully paid for.

Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee.

No stockholder of a co-operative association shall own more than one twentieth ($\frac{1}{20}$) of the common stock of the association or more than one twentieth ($\frac{1}{20}$) of the preferred stock of the association enjoying voting rights, but any one (1) stockholder may own one twentieth ($\frac{1}{20}$) of each class; and an association, in its bylaws, may limit the amount of common stock or of preferred stock enjoying voting rights which one (1) member may own to any amount less than one twentieth ($\frac{1}{20}$) of such stock.

Each share of stock shall entitle the holder thereof to one (1) vote in the management of the association; provided, however, if authorized by the articles of association, classes of preferred stock may be issued without voting rights.

Preferred stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of association and printed on the face of the certificate.

The bylaws shall prohibit the transfer of the common stock or of preferred stock enjoying voting rights to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

The association may at any time, except when the debts of the association exceed fifty percent (50%) of the assets thereof, buy in or purchase its stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one (1) year thereafter.

SOURCES: Codes, 1930, § 4111; 1942, § 4506; Laws, 1922, ch. 179; Laws, 1964, ch. 263, eff from and after passage (approved March 11, 1964).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 14, 18 et seq.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:28 et seq., 71:66 et seq., 71:93-71:95, 71:118.

2 Am. Jur. Proof of Facts 147, Associations and Clubs.

CJS. 7 C.J.S., Associations §§ 38-40, 42 et seq.

§ 79-19-27. Removal of officer or director.

Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten percent (10%) of the members, requesting the removal of the

officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing charges against him shall have the same opportunity. But such officer or director may be suspended by a vote of two thirds (2/3) of the directors, pending the hearing of such charges.

In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty percent (20%) of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

SOURCES: Codes, 1930, § 4112; 1942, § 4507; Laws, 1922, ch. 179.

RESEARCH REFERENCES

Am Jur. 5B Am. Jur. Legal Forms 2d,
Cooperative Associations, §§ 71:49, 71:50.
CJS. 7 C.J.S., Associations §§ 24, 25.

§ 79-19-29. Referendum may be had in certain cases.

Upon demand of one third (1/3) of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; provided, however, that a special meeting shall be called for the purpose.

SOURCES: Codes, 1930, § 4113; 1942, § 4508; Laws, 1922, ch. 179.

§ 79-19-31. Marketing contract.

The association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over ten (10) years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association, or any facilities to be created by the association. If they contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the association upon delivery, or when put in a merchantable condition, or at any other specified time if expressly and definitely agreed in the said contract. The contract may provide that the association may sell or resell the products delivered by its members, with or without taking title thereto; and pay over to its members the resale price, after

deducting all necessary selling, overhead, and other costs, deductions as defined in said contract, and expenses, including interest on preferred stock, not exceeding eight percent (8%) per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight percent (8%) per annum upon common stock.

SOURCES: Codes, 1930, § 4114; 1942, § 4509; Laws, 1922, ch. 179.

Cross References — Agricultural products deferred, see § 79-19-3.

RESEARCH REFERENCES

ALR. Validity and construction of provision for liquidated damages in contract with cooperative marketing association. 12 A.L.R.2d 130.

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 29 et seq.

5B Am. Jur. Legal Forms 2d, Cooperative Associations, §§ 71:102 et seq..

7 Am. Jur. Pl & Pr Forms (Rev), Cooperative Associations, Form 21.

§ 79-19-33. Remedies for breach of contract or bylaws.

(1) The bylaws or the marketing contract of any association existing hereunder may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach or threatened breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of law or equity of this state, and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

(2) In the event of any breach or threatened breach of such marketing contract by a member or other person, the association shall be entitled to an injunction to prevent the breach or further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a bond in the sum of one hundred dollars (\$100.00), the association shall be entitled to an injunction against the member or other person; provided, however, that the chancellor in his discretion may increase such bond to five hundred dollars (\$500.00), after a hearing on five (5) days' notice to the parties, if justice demands such increase in the amount of said bond.

(3) In any action, legal or equitable, upon any marketing contract of any member with any association existing hereunder, it shall be conclusively presumed that the products produced by any person, firm, or corporation during the period of time covered by such marketing contract, on the land of such member, however and by whomsoever produced, are the products of such member and, as such, are subject to the said marketing contract if the said

products have been grown or acquired under any contract between such member and such other person, firm, or corporation, entered into after the execution of the said marketing contract; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such person, firms, or corporations.

SOURCES: Codes, 1930, § 4115; 1942, § 4510; Laws, 1922, ch. 179.

JUDICIAL DECISIONS

1. In general.

An injunction was properly granted to an association to prevent the breach of a marketing contract, by which a farmer had agreed to sell all his cotton at a set price, and the association was entitled to specific performance of the contract, where the farmer's contention that the contract was voided by an association director's use of his position to secure a more favorable contract with the association than regular members could obtain, in violation of § 79-19-21, was without

merit, the director having negotiated with his buyer a floating price type of contract available to all members and having paid the association its usual marketing fee, and where the execution of such floating price contracts by the director and by other growers did not thereby release them from their agreements with the association and did not thereby release the farmer from his contract. *Campbell v. Staple Cotton Coop. Ass'n*, 334 So. 2d 378 (Miss. 1976), cert. denied, 429 U.S. 1074, 97 S. Ct. 813, 50 L. Ed. 2d 792 (1977).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 42 et seq.

7 Am. Jur. Pl & Pr Forms (Rev), Coop-

erative Associations, Forms 11, 12, 21, 31-33.

CJS. 7 C.J.S., Associations § 103-105.

§ 79-19-35. Purchasing business of other associations, persons, firms or corporations; payment; stock issued.

Whenever an association organized or existing hereunder with preferred capital stock shall purchase the stock or any property, or any interest in any property, of any person, firm, or corporation, or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

SOURCES: Codes, 1930, § 4116; 1942, § 4511; Laws, 1922, ch. 179.

JUDICIAL DECISIONS

1. In general.

Where co-operative association in bringing suit against a member filed a bond for \$100, and there was no motion to

increase the bond, the association's liability was limited to \$100, and it was error for the trial court on dissolving injunction to allow attorney's fees of \$250. *Staple*

Cotton Coop. Ass'n v. Borodofsky, 143
Miss. 585, 108 So. 807 (1926).

§ 79-19-37. Conflicting laws not to apply.

Any provisions of law which otherwise would be in conflict with this chapter shall not be construed as applying to the associations herein provided for, nor shall any such provisions be deemed to be repealed by this chapter.

Any exemptions under any and all existing laws applying to agricultural products in the possession or under the control of the individual producer shall apply similarly and completely to such products delivered by its farmer members, in the possession or under the control of the association.

SOURCES: Codes, 1930, § 4117; 1942, § 4512; Laws, 1922, ch. 179.

§ 79-19-39. Limitation of the use of term "cooperative."

No person, firm, corporation, or association hereafter organized or doing business in this state shall be entitled to use the word "cooperative" as part of its corporate or other business name or title for producers' cooperative marketing activities, unless it has complied with the provisions of this chapter.

SOURCES: Codes, 1930, § 4118; 1942, § 4513; Laws, 1922, ch. 179.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative
Associations §§ 5 et seq.

§ 79-19-41. Interest in other corporations or associations.

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any corporation or association, with or without capital stock, engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the agricultural products handled by the association, or the byproducts thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association, against the commodities delivered by it, or to any other person; and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this state or the United States, its warehouse receipts delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

SOURCES: Codes, 1930, § 4119; 1942, § 4514; Laws, 1922, ch. 179.

§ 79-19-43. Contracts and agreements with other associations.

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements, and contracts and arrangements with any other corporation, association or associations, formed in this or in any other state, for the cooperative or more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective businesses.

SOURCES: Codes, 1930, § 4120; 1942, § 4515; Laws, 1922, ch. 179.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 29 et seq.

5A Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:261 et seq.

§ 79-19-45. Association heretofore organized may adopt the provisions of this chapter.

Any corporation or association organized under previously existing statutes, or any foreign corporation or association heretofore authorized by the laws of this state to do business in this state, or any foreign corporation or association organized under the laws of another state, may by a majority vote of its directors or members be brought under this chapter. It shall make out in duplicate a statement signed and sworn to by a majority of its directors, to the effect that the corporation or association has by a majority vote of its directors decided to accept the benefits and be bound by the provisions of this chapter. Articles of association shall be filed as required herein except that they shall be signed by a majority of the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of association.

SOURCES: Codes, 1930, § 4121; 1942, § 4516; Laws, 1922, ch. 179.

§ 79-19-47. How associations organized in another state may carry on business in this state.

Any cooperative marketing association, organized under appropriate laws of any other state for the purposes and with the restrictions and limitations substantially the same as those set forth herein, may operate and do business in this state with all the rights, powers, and privileges granted to any cooperative marketing association incorporated under this chapter, upon compliance with any or either of the laws of this state regarding the qualification of foreign corporations, to carry on business within this state.

SOURCES: Codes, 1930, § 4122; 1942, § 4517; Laws, 1922, ch. 179.

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. Proof of Facts 483, Doing Business.

§ 79-19-49. Misdemeanor; breach of marketing contract of cooperative association; spreading false reports about the finances or management thereof.

Any person or persons or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who knowingly spreads false reports about the finances or management thereof, shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100.00), and not more than one thousand dollars (\$1,000.00), for such offense; and shall be liable to the association aggrieved in a civil suit in the penal sum of one thousand dollars (\$1,000.00) for each such offense.

SOURCES: Codes, 1930, § 4123; 1942, § 4518; Laws, 1922, ch. 179.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 46. 7 Am. Jur. Pl & Pr Forms (Rev), Cooperative Associations, Forms 31-33.

§ 79-19-51. Associations not in restraint of trade.

No association organized hereunder shall be deemed to be in violation of the anti-trust statutes of this state or a combination in restraint of trade or an illegal monopoly, nor in an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members or any agreements authorized in this chapter be considered illegal or in restraint of trade, or in violation of said anti-trust statutes of said state.

SOURCES: Codes, 1930, § 4124; 1942, § 4519; Laws, 1922, ch. 179.

Cross References — Effect of antitrust laws on agricultural organizations, see § 75-21-5.

§ 79-19-53. Exemptions.

Each association organized hereunder shall be exempt from the payment of ad valorem taxes on agricultural products and products of farm, grove or garden produced by its members within the State of Mississippi.

SOURCES: Codes, 1930, § 4125; 1942, § 4520; Laws, 1922, ch. 179; Laws, 1936, ch. 328; Laws, 1954, ch. 151, § 2, eff May 1, 1954.

Cross References — Privilege tax exemptions, see §§ 27-15-225, 27-17-485.
Ad valorem tax exemptions, see §§ 27-31-1 et seq.

RESEARCH REFERENCES

ALR. Income and excess profits tax of cooperative association and its patrons or members. 8 A.L.R.2d 925.

§ 79-19-55. Filing fees.

For filing articles of association, an association organized hereunder shall pay to the secretary of state twenty dollars (\$20.00); and for filing an amendment to the articles, ten dollars (\$10.00).

SOURCES: Codes, 1930, § 4126; 1942, § 4521; Laws, 1922, ch. 179; Laws, 1958, ch. 346, § 2, eff July 1, 1958.

§ 79-19-57. Cooperative marketing associations may maintain replevin.

All cooperative marketing associations organized or doing business under the laws of the State of Mississippi may obtain the possession of personal property to the immediate possession of which they may be entitled, by the action of replevin, and the giving of this means of enforcement of rights shall not be in lieu, or in repeal, of any other rights or remedies now given to cooperative marketing associations under the laws of the State of Mississippi.

SOURCES: Codes, 1930, § 4127; 1942, § 4522; Laws, 1924, ch. 275.

Cross References — Action of replevin, see §§ 11-37-101 et seq.

JUDICIAL DECISIONS

1. In general.

Replevin does not lie in favor of cotenant; cooperative marketing law held not to

change this rule. Staple Cotton Coop. Ass'n v. Hemphill, 142 Miss. 298, 107 So. 24 (1926).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 42 et seq.

§ 79-19-59. Liquidated damages may be recovered.

If such cooperative marketing association recover judgment as plaintiff in replevin and the property sued for be agricultural products and the plaintiff's right to the possession thereof as against the defendant be by virtue of a marketing agreement with a member of such association and the defendant has bonded the property within two (2) days after its seizure in replevin, the plaintiff shall, in addition to the judgment now provided by law, recover as an element of damages, of the defendant and the sureties on his bond, for the wrongful taking and detention or the wrongful detention of the property, a sum equal to such damages as the plaintiff could have recovered of such member of the association as liquidated damages under the marketing agreement, for the breach thereof by wrongful detention or disposal of said property by the member.

SOURCES: Codes, 1930, § 4128; 1942, § 4523; Laws, 1934, ch. 275.

RESEARCH REFERENCES

ALR. Validity and construction of provision for liquidated damages in contract with cooperative marketing association. 12 A.L.R.2d 130.

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 45.

7 Am. Jur. Pl & Pr Forms (Rev), Cooperative Associations, Forms 11, 31-33.

§ 79-19-61. Loan limited to 50 percent of capital and surplus.

The total liability to any association organized or doing business under the terms of this chapter by a person, company, corporation, or firm for money loaned shall not exceed fifty percent (50%) of the aggregate paid in capital and surplus of said association. The discount of bills of exchange drawn in good faith, against actual existing values of loans made on time secured by warehouse receipts or bills of lading, or actually existing values, shall not be restricted to, or considered as coming within, such limitation of fifty percent (50%).

SOURCES: Codes, 1930, § 4129; 1942, § 4524; Laws, 1924, ch. 186.

§ 79-19-63. Stock in bank for cooperatives.

All cooperative agricultural associations of any kind or character whatsoever, heretofore or hereafter organized under the laws of the State of Mississippi, are hereby authorized and empowered to purchase, or otherwise acquire, and to hold stock in the New Orleans Bank for Cooperatives and in the Central Bank for Cooperatives in accordance with the provisions of the Farm Credit Act of 1933 as heretofore amended and as it may hereafter be amended by the Congress of the United States.

All corporations, heretofore or hereafter organized under the laws of the State of Mississippi, which are eligible to borrow from production credit associations are hereby authorized and empowered to purchase, or otherwise

acquire, and to hold stock in production credit associations in accordance with the provisions of the Farm Credit Act of 1933 as heretofore amended and as it may hereafter be amended by the Congress of the United States.

SOURCES: Codes, 1942, § 4525; Laws, 1934, ch. 276.

Federal Aspects — Farm Credit Act of 1933, see 12 USCS §§ 1131 et seq.

CHAPTER 21

Aquatic Products Marketing Association

General provisions	79-21-1
Statewide Fresh and Salt Water Co-Operatives	79-21-51

GENERAL PROVISIONS

SEC.	
79-21-1.	Title.
79-21-3.	Declaration of policy.
79-21-5.	Definitions.
79-21-7.	A supplementary law.
79-21-9.	Who may organize.
79-21-11.	Purposes.
79-21-13.	Powers.
79-21-15.	Members.
79-21-17.	Articles of association.
79-21-19.	General cooperative marketing association laws apply.
79-21-21.	Repealed.

§ 79-21-1. Title.

This chapter shall be known and cited as the "Co-operative Aquatic Products Marketing Law."

SOURCES: Codes, 1942, § 4535-01; Laws, 1968, ch. 270, § 1, eff from and after passage (approved August 6, 1968).

Cross References — Agricultural cooperative associations, see §§ 79-17-1 et seq.
Cooperative marketing associations generally, see §§ 79-19-1 et seq.

Authority of any association organized under provisions of this chapter and Chapter 17 and 19 to organize and operate branch associations, see § 79-17-25.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 1 et seq.

§ 79-21-3. Declaration of policy.

In order to promote, foster and encourage the intelligent and orderly marketing of aquatic products through co-operation and to eliminate speculation and waste; and to make the distribution of aquatic products as direct as can be efficiently done between producer and consumer; and to stabilize the marketing of aquatic products; and to promote, foster and encourage the aquatic products industry in this state, this chapter is passed.

SOURCES: Codes, 1942, § 4535-02; Laws, 1968, ch. 270, § 2, eff from and after passage (approved August 6, 1968).

Cross References — Regulation of domestic fish farming, see §§ 69-7-501 et seq.

§ 79-21-5. Definitions.

As used in this chapter:

(a) The term “member” shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(b) The term “person” shall include individuals, firms, partnerships, corporations and associations.

(c) The term “association” means any association organized under the terms of this chapter.

(d) The term “aquatic product” shall include all commercial products of aquatic life normally found in, or associated with, the fresh waters of the State of Mississippi, or the United States. It shall specifically include, but is not limited to, domesticated fish, fish of all species, and their byproducts, normally found in fresh water.

(e) The term “commercial fishing” shall include all persons engaged totally or part-time in the business of catching or otherwise taking aquatic products from the fresh waters of the State of Mississippi, or the United States, for commercial purposes.

(f) The term “domestic fish farming” shall include all persons engaged in the growing, managing, harvesting and/or marketing of domesticated fish as a cultivated crop in privately owned waters.

(g) The term “domesticated fish” shall be understood to mean any fish that are spawned and grown, managed, harvested and marketed on an annual, semiannual, biennial, or short-term basis in privately owned waters.

(h) The term “producer” shall mean any person engaged totally, or part-time, in the business of commercial fishing or domestic fish farming for the commercial purpose of providing aquatic products to consumers.

SOURCES: Codes, 1942, § 4535-03; Laws, 1968, ch. 270, § 3, eff from and after passage (approved August 6, 1968).

Cross References — Regulation of domestic fish farming, see §§ 69-7-501 et seq.

Co-operative marketing associations in connection with aquatic product found in salt waters, see §§ 79-21-51 et seq.

Salt water aquatic product, as used in §§ 79-21-51 through 79-21-67, defined, see § 79-21-53.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 1.

CJS. 7 C.J.S., Associations §§ 1-5.

§ 79-21-7. A supplementary law.

This chapter shall not be construed to permit the catching or sale of any fish or other aquatic product which is otherwise prohibited by law from being

caught or sold, but shall be supplementary thereto. This chapter is supplementary of and not amendatory or in alteration of any other laws for the accomplishment of any of the purposes herein set forth, and shall apply only to organizations created and operating hereunder. However, associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

SOURCES: Codes, 1942, § 4535-04; Laws, 1968, ch. 270, § 4, eff from and after passage (approved August 6, 1968).

Cross References — Nonprofit nonshare corporations generally, see §§ 79-11-101 et seq.

§ 79-21-9. Who may organize.

Ten (10) or more persons who are residents of the State of Mississippi and engaged in the business of commercial fishing or domestic fish farming may form a nonprofit, cooperative association, with or without capital stock, under the provisions of this chapter.

SOURCES: Codes, 1942, § 4535-05; Laws, 1968, ch. 270, § 5, eff from and after passage (approved August 6, 1968).

Cross References — Organization of cooperative marketing associations, generally, see § 79-19-5.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13 et seq.	CJS. 7 C.J.S., Associations § 7.
5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:6, 71:7.	

§ 79-21-11. Purposes.

An association may be organized to engage in any activity in connection with the catching, growing, breeding, handling, shipping, or utilization, or moving or marketing of the byproducts thereof of aquatic products of every description, and with the marketing or selling of aquatic products of its members, or with the catching, harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the byproducts thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above-enumerated activities; or in any one or more of the activities specified herein.

SOURCES: Codes, 1942, § 4535-06; Laws, 1968, ch. 270, § 6, eff from and after passage (approved August 6, 1968).

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 4.

§ 79-21-13. Powers.

Each and every association organized hereunder shall have the following powers:

(a) To engage in any activity in connection with the catching, growing, breeding, handling, shipping, or utilization, or moving or marketing of the byproducts thereof of aquatic products of every description, and with the marketing or selling of aquatic products of its members, or with the catching, harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, shipping, or utilization of any aquatic product produced or delivered to it by its members; or the manufacturing or marketing of the byproducts thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No association shall handle the aquatic products of any nonmember except as necessary and incidental to the handling of the aquatic products of members, and in any such case the value of aquatic products of nonmembers so handled shall not exceed the value of the aquatic products handled by the association for its members.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above-mentioned activities.

(d) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws. However, if the association shall decide to invest any of said funds in bonds, then, in such event, at least fifty percent (50%) of such bond investment must be in bonds issued by the State of Mississippi or one or more of its counties, districts, municipalities, or subdivisions.

(e) To purchase or otherwise acquire, and to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the capital stock or bonds of any corporation or association engaged in any related activity, or in the warehousing or handling or marketing of any of the aquatic products handled by the association.

(f) To buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association, or incidental thereto.

(g) Obtain possession of personal property to the immediate possession of which they may be entitled by the action of replevin.

(h) To sue and be sued, and to prosecute and be prosecuted to judgment and suit before any court; and to contract and be contracted with in all matters.

(i) To do each and everything necessary, suitable, or proper for the accomplishment of any one (1) of the purposes or the attainment of any one or more of the objects herein enumerated, or conducive to or expedient for the interest or benefit of the association or its members; and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and to do any such thing anywhere.

SOURCES: Codes, 1942, § 4535-07; Laws, 1968, ch. 270, § 7, *eff from and after passage* (approved August 6, 1968).

Cross References — Powers of cooperative marketing associations generally, see § 79-19-9.

Fresh water aquatic product, as used in this chapter, defined, see § 79-21-5.

Salt water aquatic product, as used in §§ 79-21-51 through 79-21-67, defined, see § 79-21-53.

Another section derived from same 1942 code section, see § 79-21-15.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 26 et seq.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:54 et seq., 71:76 et seq., 71:102 et seq.

CJS. 7 C.J.S., Associations §§ 71, 72 et seq.

§ 79-21-15. Members.

(1) Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock or certificate of membership, only to persons engaged in commercial fishing or domestic fish farming who catch, take, grow, or otherwise obtain aquatic products to be handled by or through the association. Certificate of membership and common stock shall not be transferable, and no person shall acquire the same by operation of law or otherwise, except as provided herein.

(2) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, manager, or member thereof, duly authorized in writing.

(3) All members engaged in commercial fishing shall be required to have receipts evidencing that they have paid in full all licensing requirements of the State of Mississippi with regard to their fishing operation, including licenses and fees required with regard to their equipment. A failure to pay for such licenses or fees, when required by statute, shall result in the automatic suspension of such member from the association until such licenses or fees are paid in full.

(4) No member of any association organized under the terms of this chapter shall have more than one (1) vote, regardless of the amount of stock or membership capital he may own therein.

(5) Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee.

(6) The first meeting of persons at interest, unless otherwise provided for, may be called by notice published in some convenient newspaper at least five (5) days before the time appointed for the meeting, which notice shall be signed by one or more persons named in the articles of association; and the meeting when assembled may proceed to organize the association.

SOURCES: Codes, 1942, §§ 4535-07, 4535-08; Laws, 1968, ch. 270, §§ 7, 8, eff from and after passage (approved August 6, 1968).

Cross References — Commercial fishing licenses, see § 49-7-9.

Members of cooperative marketing associations generally, see § 79-19-11.

Fresh water aquatic product, as used in this chapter, defined, see § 79-21-5.

Another section derived from same 1942 code section, see § 79-21-13.

Salt water aquatic product, as used in §§ 79-21-51 through 79-21-67, defined, see § 79-21-53.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 18 et seq.

5B Am. Jur. Legal Forms 2d, Cooperative Associations, §§ 71:28 et seq., 71:93.

7 Am. Jur. Pl & Pr Forms (Rev), Cooperative Associations, Form 3.

2 Am. Jur. Proof of Facts 147, Associations and Clubs.

CJS. 7 C.J.S., Associations §§ 38-40, 42 et seq.

§ 79-21-17. Articles of association.

Each association formed under this chapter must prepare and file articles of association setting forth:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding ninety-nine (99) years.

(e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which property rights and interests, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This paragraph of the articles of association shall not be altered, amended, or repealed except by the written consent of the vote of three-fourths (¾) of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided the articles of association must contain a statement of the number of shares of stock to which no preference is granted and the nature and definite extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one (1) of them before an officer authorized by the laws of this state to take and certify acknowledgments; and shall be filed and recorded in the office of the secretary of state.

SOURCES: Codes, 1942, § 4535-09; Laws, 1968, ch. 270, § 9, eff from and after passage (approved August 6, 1968).

Cross References — Articles of association of cooperative marketing associations, generally, see §§ 79-19-13, 79-19-15.

Conversion of co-operative marketing association to business corporation, see § 79-17-41.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13 et seq. seq., 71:45 et seq., 71:66 et seq., 71:94, 71:95.

5B Am. Jur. Legal Forms 2d, Cooperative Associations, §§ 71:8 et seq., 71:28 et 16. **CJS.** 7 C.J.S., Associations §§ 12, 14-

§ 79-21-19. General cooperative marketing association laws apply.

The general co-operative marketing association laws of this state shall apply to all associations organized pursuant to this chapter. Subject to the foregoing provisions of this chapter, all associations organized pursuant to this chapter shall enjoy all of the rights and privileges of such general co-operative marketing association laws, and shall also be subject to their requirements, liabilities and penalties. To such extent the provisions of Chapter 19, Title 79, Mississippi Code of 1972, shall be construed to include associations organized under the provisions of this chapter. However, associations organized under the provisions of this chapter shall be limited to the marketing and distribution of aquatic products and their byproducts, as provided herein; and the general co-operative marketing association laws of this state shall not be construed so as to authorize associations organized under the provisions of this chapter to market or distribute to consumers products other than aquatic products and their byproducts, as provided herein.

SOURCES: Codes, 1942, § 4535-10; Laws, 1968, ch. 270, § 10, eff from and after passage (approved August 6, 1968).

Cross References — Agricultural cooperative Marketing Associations, see §§ 79-19-1 et seq.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 12.

§ 79-21-21. Repealed.

Repealed by Laws, 1990, ch. 345, § 1, eff from and after passage (approved March 12, 1990).

[Codes, 1942, § 4535-11; Laws, 1968, ch. 270, § 11]

Editor's Note — Former § 79-21-21 was entitled: Counties where applicable.

STATEWIDE FRESH AND SALT WATER CO-OPERATIVES

SEC.

- 79-21-51. Declaration of policy.
- 79-21-53. Definitions.
- 79-21-55. Construction of §§ 79-21-51 through 79-21-67.
- 79-21-57. Who may organize.
- 79-21-59. Purposes.
- 79-21-61. Powers.
- 79-21-63. Members.
- 79-21-65. Articles of association.
- 79-21-67. General cooperative marketing association laws apply.

§ 79-21-51. Declaration of policy.

In order to promote, foster and encourage the intelligent and orderly marketing of aquatic products through cooperation and to eliminate speculation and waste; to make the distribution of aquatic products as direct as can be efficiently done between producer and consumer; to stabilize the marketing of aquatic products; and to promote, foster and encourage the aquatic products industry in this state, Sections 79-21-51 through 79-21-67 are passed.

SOURCES: Laws, 1974, ch. 438, § 1, eff from and after passage (approved March 26, 1974).

Cross References — Regulation of domestic fish farming, see §§ 69-7-501 et seq. Aquatic product as used in this chapter, defined, see § 79-21-5. Aquatic product, as used in §§ 79-21-51 through 79-21-67, defined, see § 79-21-53.

§ 79-21-53. Definitions.

As used in Sections 79-21-51 through 79-21-67, Mississippi Code of 1972:

(a) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(b) The term "person" shall include individuals, firms, partnerships, corporations and associations.

(c) The term “association” means any association organized under the terms of Sections 79-21-51 through 79-21-67, Mississippi Code of 1972.

(d) The term “aquatic product” shall include all commercial products of aquatic life normally found in, or associated with, the salt waters of the State of Mississippi or the United States. It shall specifically include, but is not limited to, shellfish, domesticated fish, fish of all species, and their by-products, normally found in salt water.

(e) The term “commercial fishing” shall include all persons engaged totally or part-time in the business of catching, freezing, marketing, processing, transporting, wholesaling or otherwise involved in the utilization of aquatic products from the salt waters of the State of Mississippi or the United States for commercial purposes.

(f) The term “domestic fish farming” shall include all persons engaged in the growing, managing, harvesting and/or marketing of domesticated fish or shellfish as a cultivated crop in privately owned or leased waters or submerged lands.

(g) The term “domesticated fish” means any fish or shellfish that are spawned and grown, managed, harvested and marketed on an annual, semiannual, biennial, or short-term basis in privately owned or leased waters or submerged lands.

(h) The term “producer” means any person engaged totally, or part-time, in the business of commercial fishing or domestic fish farming for the commercial purpose of providing aquatic products to consumers.

SOURCES: Laws, 1974, ch. 438, § 2; Laws, 1990, ch. 427, § 1, **eff from and after passage (approved March 15, 1990).**

Cross References — Regulation of domestic fish farming, see §§ 69-7-501 et seq.

Co-operative marketing associations in connection with aquatic products found in fresh waters, see §§ 79-21-3 et seq.

Fresh water aquatic product, as used in this chapter, defined, see § 79-21-5.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 1.

CJS. 7 C.J.S., Associations §§ 1-5.

§ 79-21-55. Construction of §§ 79-21-51 through 79-21-67.

Sections 79-21-51 through 79-21-67 shall not be construed to permit the catching or sale of any fish or other aquatic product which is otherwise prohibited by law from being caught or sold, but shall be supplementary thereto. These sections are supplementary of and not amendatory or in alteration of any other laws for the accomplishment of any of the purposes herein set forth, and shall apply only to organizations created and operating hereunder. However, associations organized hereunder shall be deemed non-profit, inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

SOURCES: Laws, 1974, ch. 438, § 3, eff from and after passage (approved March 26, 1974).

Cross References — Nonprofit nonshare corporations generally, see §§ 79-11-101 et seq.

§ 79-21-57. Who may organize.

Ten (10) or more persons who are residents of the State of Mississippi and engaged in the business of commercial fishing or domestic fish farming may form a nonprofit, cooperative association, with or without capital stock, under the provisions of Sections 79-21-51 through 79-21-67.

SOURCES: Laws, 1974, ch. 438, § 4, eff from and after passage (approved March 26, 1974).

Cross References — Organization of cooperative marketing associations generally, see § 79-19-5.

Fresh water commercial and domestic fish farming, as used in this chapter, defined, see § 79-21-5.

Salt water commercial and domestic fish farming, as used in §§ 79-21-51 through 79-21-67, defined, see § 79-21-53.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13 et seq.

CJS. 7 C.J.S., Associations § 7.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:6, 71:7.

§ 79-21-59. Purposes.

An association may be organized to engage in any activity in connection with the catching, growing, breeding, handling, shipping, or utilization, or moving or marketing of the byproducts thereof of aquatic products of every description, and with the marketing or selling of aquatic products of its members, or with the catching, harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the byproducts thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above-enumerated activities; or in any one or more of the activities specified herein.

SOURCES: Laws, 1974, ch. 438, § 5, eff from and after passage (approved March 26, 1974).

Cross References — Fresh water aquatic product defined, see § 79-21-5.

Salt water aquatic product defined, see § 79-21-53.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 4.

§ 79-21-61. Powers.

Each and every association organized hereunder shall have the following powers:

(a) To engage in any activity in connection with the catching, growing, breeding, handling, shipping, or utilization, or moving or marketing of the byproducts thereof of aquatic products of every description, and with the marketing or selling of aquatic products of its members, or with the catching, harvesting, preserving, drying, processing, manufacturing, canning, packing, grading, storing, handling, shipping, or utilization of any aquatic product produced or delivered to it by its members; or the manufacturing or marketing of the byproducts thereof; or in connection with the purchase, hiring, or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this section. No association shall handle the aquatic products of any nonmember except as necessary and incidental to the handling of the aquatic products of members, and in any such case the value of aquatic products of nonmembers so handled shall not exceed the value of the aquatic products handled by the association for its members.

(b) To borrow money and to make advances to members.

(c) To act as the agent or representative of any member or members in any of the above-mentioned activities.

(d) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws. However, if the association shall decide to invest any of said funds in bonds, then, in such event, at least fifty percent (50%) of such bond investment must be in bonds issued by the State of Mississippi or one or more of its counties, districts, municipalities or subdivisions.

(e) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in and to sell, transfer or pledge or guarantee the payment of dividends or interest on, or the retirement or redemption of shares of the capital stock or bonds of any corporation or association engaged in any related activity, or in the warehousing or handling or marketing of any of the aquatic products handled by the association.

(f) To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto.

(g) Obtain possession of personal property to the immediate possession of which they may be entitled by the action of replevin.

(h) To sue and be sued, and to prosecute and be prosecuted to judgment and suit before any court; and to contract and be contracted with in all matters.

(i) To do each and everything necessary, suitable or proper for the accomplishment of any one (1) of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association or its members; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and to do any such thing anywhere.

SOURCES: Laws, 1974, ch. 438, § 6, eff from and after passage (approved March 26, 1974).

Cross References — Powers of cooperative marketing associations generally, see § 79-19-9.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 26-28.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:54 et seq., 71:76 et seq., 71:99 et seq.

CJS. 7 C.J.S., Associations §§ 71, 72 et seq.

§ 79-21-63. Members.

(1) Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock or certificate of membership, only to persons engaged in commercial fishing or domestic fish farming who catch, take, grow or otherwise obtain aquatic products to be handled by or through the association. Certificate of membership and common stock shall not be transferable and no person shall acquire the same by operation of law or otherwise, except as provided herein.

(2) If a member of a nonstock association be other than a natural person, such member may be represented by an individual, associate, officer, manager or member thereof, duly authorized in writing.

(3) All members engaged in commercial fishing shall be required to have receipts evidencing that they have paid in full all licensing requirements of the State of Mississippi with regard to their fishing operation, including licenses and fees required with regard to their equipment. A failure to pay for such licenses or fees, when required by statute, shall result in the automatic suspension of such member from the association until such licenses or fees are paid in full.

(4) No member of any association organized under the terms of Sections 79-21-51 through 79-21-67 shall have more than one (1) vote, regardless of the amount of stock or membership capital he may own therein.

(5) Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee.

(6) The first meeting of persons at interest, unless otherwise provided for, may be called by notice published in some convenient newspaper at least five

(5) days before the time appointed for the meeting, which notice shall be signed by one or more persons named in the articles of association; and the meeting when assembled may proceed to organize the association.

SOURCES: Laws, 1974, ch. 438, § 7, eff from and after passage (approved March 26, 1974).

Cross References — Commercial fishing licenses, see § 49-7-9.

Members of cooperative marketing associations generally, see § 79-19-11.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 18 et seq.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:28 et seq., 71:93.

7 Am. Jur. Pl & Pr Forms (Rev), Cooperative Associations, Form 3.

2 Am. Jur. Proof of Facts 147, Associations and Clubs.

CJS. 7 C.J.S., Associations §§ 38-40, 42 et seq.

§ 79-21-65. Articles of association.

Each association formed under Sections 79-21-51 through 79-21-67 must prepare and file articles of association setting forth:

(a) The name of the association.

(b) The purposes for which it is formed.

(c) The place where its principal business will be transacted.

(d) The term for which it is to exist, not exceeding ninety-nine (99) years.

(e) The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of office of such directors.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which property rights and interests, respectively, of each member may and shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members in accordance with such general rule or rules. This paragraph of the articles of association shall not be altered, amended or repealed except by the written consent of the vote of three-fourths ($\frac{3}{4}$) of the members.

(g) If organized with capital stock, the amount of such stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of association must contain a statement of the number of shares of stock to which no preference is granted and the nature and definite extent of the preference and privileges granted to each.

The articles must be subscribed by the incorporators and acknowledged by one (1) of them before an officer authorized by the laws of this state to take and

certify acknowledgements; and shall be filed and recorded in the office of the secretary of state.

SOURCES: Laws, 1974, ch. 438, § 8, eff from and after passage (approved March 26, 1974).

Cross References — Conversion of cooperative marketing association to business corporation, see § 79-17-41.

Articles of association of cooperative marketing associations generally, see §§ 79-19-13, 79-19-15.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations §§ 13-15. seq., 71:45-71:51, 71:66 et seq., 71:94, 71:95.

5B Am. Jur. Legal Forms 2d, Cooperative Associations §§ 71:8 et seq., 71:28 et 16. **CJS.** 7 C.J.S., Associations §§ 12, 14-

§ 79-21-67. General cooperative marketing association laws apply.

The general cooperative marketing association laws of this state shall apply to all associations organized pursuant to Section 79-21-51 through 79-21-67. Subject to the foregoing provisions of Sections 79-21-51 through 79-21-67, all associations organized pursuant to these sections shall enjoy all of the rights and privileges of such general cooperative marketing association laws, and shall also be subject to their requirements, liabilities and penalties. To such extent the provisions of Chapter 19, Title 79, shall be construed to include associations organized under the provisions of Sections 79-21-51 through 79-21-67. However, associations organized under the provisions of Sections 79-21-51 through 79-21-67 shall be limited to the marketing and distribution of aquatic products and their byproducts, as provided herein; and the general cooperative marketing association laws of this state shall not be construed so as to authorize associations organized under the provisions of Sections 79-21-51 through 79-21-67 to market or distribute to consumers products other than aquatic products and their byproducts, as provided herein.

SOURCES: Laws, 1974, ch. 438, § 9, eff from and after passage (approved March 26, 1974).

Cross References — Agricultural cooperative marketing associations, see §§ 79-19-1 et seq.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Cooperative Associations § 12.

CHAPTER 22

Mississippi Aquaculture Act of 1988

SEC.

- 79-22-1. Short title.
- 79-22-3. Legislative purpose.
- 79-22-5. Definitions.
- 79-22-7. Marketing permit, generally.
- 79-22-9. Cultivation and marketing permit necessary for certain aquatic products; requirements for issuance of permit.
- 79-22-11. Withholding permit.
- 79-22-13. Nonrenewal of permit.
- 79-22-15. Issuance of permits for taking of game fish for brood stock; promulgation of regulations; issuance of cultivation and marketing permits; inspections.
- 79-22-17. Building requirements.
- 79-22-19 and 79-22-21. Repealed.
- 79-22-23. Leasing waters; aquaculture lease management program.
- 79-22-25. Management plan to be developed; Aquatic Ventures Center.
- 79-22-27. Order to stop sale or distribution of product found in violation of chapter.
- 79-22-29. Penalties.
- 79-22-31. Application to state educational institutions.
- 79-22-33. Application to catfish farming industry.
- 79-22-35. Tilapia products; labeling; penalties.

§ 79-22-1. Short title.

This chapter shall be known and may be cited as the Mississippi Aquaculture Act of 1988.

SOURCES: Laws, 1988, ch. 481, § 1, eff from and after July 1, 1988.

Cross References — Administration of chapter, see § 69-1-203.

Domestic fish farming, see §§ 69-7-501 et seq.

Catfish Marketing Law, see §§ 69-7-601 et seq.

Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-3. Legislative purpose.

The Legislature recognizes that aquaculture is the fastest growing segment of the United States agriculture industry and declares that it is the intent of this legislation to effectively encourage and support United States citizens in expanded and new growth of aquaculture in this state while conserving and enhancing aquatic resources and providing mechanisms for increasing aquaculture production which will lead to the creation of new

industries, job opportunities, income for aquaculturists, tax revenues and other benefits to this state.

SOURCES: Laws, 1988, ch. 481, § 2; Laws, 1993, ch. 457, § 1, eff from and after July 1, 1993.

Cross References — Domestic fish farming, see §§ 69-7-501 et seq.

Catfish Marketing Law, see §§ 69-7-601 et seq.

Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-5. Definitions.

For the purpose of this chapter unless the context clearly requires otherwise:

(a) “Aquaculture” means any form of agriculture that includes the process of growing, farming, cultivating and/or harvesting cultured aquatic products in marine or freshwaters and includes management by an aquaculturist.

(b) “Aquaculturist” is a person who is engaged in the cultivating of cultured aquatic products.

(c) “Aquaculture facility” means any facility or resources that are used for aquaculture activities and operations in Mississippi.

(d) “Cultured aquatic products” are marine or freshwater plants and animals that are propagated, farmed or cultivated in an aquaculture facility under the supervision and management of an aquaculturist or that are naturally produced in an aquaculture facility which at the time of production are under the active supervision and management of an aquaculturist.

(e) “Department” means the Department of Agriculture and Commerce.

(f) A “cultivation permit” is a permit issued by the department applicable to design criteria to prevent release of certain cultured aquatic products from an aquaculture facility into the environment.

(g) A “marketing permit” is a permit issued by the department to provide a mechanism for tracing certain marketed and cultured aquatic products to verify that they were cultured in an aquaculture facility and were not harvested from wild stocks and to prevent the release of undesirable species into the environment.

SOURCES: Laws, 1988, ch. 481, § 3; Laws, 1991, ch. 530, § 3; Laws, 1993, ch. 457, § 2, eff from and after July 1, 1993.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-7. Marketing permit, generally.

All currently recognized native aquatic plants, animals and nongame fish may be freely produced and marketed by an aquaculturist unless specifically regulated elsewhere. If a marketing permit is needed to aid in selling such cultured aquatic products in other states or countries, then the department shall issue such a permit when requested by an aquaculturist.

SOURCES: Laws, 1988, ch. 481, § 4, eff from and after July 1, 1988.

Cross References — Domestic fish farming, see §§ 69-7-501 et seq.

Catfish Marketing Law, see §§ 69-7-601 et seq.

Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-9. Cultivation and marketing permit necessary for certain aquatic products; requirements for issuance of permit.

(1) An aquaculturist shall obtain a cultivation and marketing permit for cultured aquatic products produced from the following aquatic plants and animals:

(a) All nonnative aquatic plants and animals, including those that are well established in limited or extensive areas of natural lakes, rivers and streams in this state;

(b) Fish classified as game fish in Mississippi; however, except as authorized in subsection (2), the department shall not issue any such permits for the following game fish: black bass, bream, crappie, flathead catfish, walleye and all members of the family Centrarchidae and Percidae;

(c) Endangered, threatened or protected species;

(d) Any aquatic plants or animals which have been genetically modified or are to be genetically modified by means other than breeding and crossbreeding.

(2) Former subsection (2) shall stand repealed from and after July 1, 2003.

(3) The department shall not issue the permits required in this section until the department approves the proposed aquaculture facility design or the actual facility and such permits shall only be issued to citizens of the United States. The department shall inspect the aquaculture facility prior to the

introduction of the aquatic products to be cultured to insure compliance with the approved permit specifications. The department may also conduct periodic inspections of all facilities engaged in the propagation of nonnative species to insure that operational activities comply with approved permit specifications. All required permits shall be renewed annually. For a resident of Mississippi, the fee for a marketing or cultivation permit shall not exceed One Hundred Dollars (\$100.00) for each species of aquatic products produced. The fee for a marketing or cultivation permit issued to a nonresident of Mississippi shall equal the amount imposed by the nonresident's state for such permit on a resident of Mississippi.

SOURCES: Laws, 1988, ch. 481, § 5; Laws, 1993, ch. 457, § 3; Laws, 1997, ch. 370, § 1; Laws, 1998, ch. 384, § 1; Laws, 2000, ch. 348, § 1, eff from and after July 1, 2000.

Editor's Note — Former subsection (2), which read: "The department is authorized, after consultation with the Department of Wildlife, Fisheries and Parks, the Department of Marine Resources and the Division of Agriculture, Forestry and Veterinary Medicine at Mississippi State University, to issue five (5) cultivation and marketing permits for the production and sale of hybrid bream (*Lepomis* spp.) and hybrid black stripe crappie (*Pomoxis* spp.) in a pilot program as prescribed by the department's regulations. Such cultured game fish shall be marketed through an approved processing facility in a labeled package and shall remain in the original package when displayed for sale," was repealed by Laws of 2000, ch. 348 § 1, effective July 1, 2003.

Cross References — Domestic fish farming, see §§ 69-7-501 et seq.

Catfish Marketing Law, see §§ 69-7-601 et seq.

Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Penalties for violations, see § 79-22-29.

Application to the catfish farming industry, see § 79-22-33.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-11. Withholding permit.

By withholding a culture and/or marketing permit, the department may prohibit the aquaculturing of any species at any location if the department determines it would be detrimental to the public interest and presents its determination in writing with supporting justification.

SOURCES: Laws, 1988, ch. 481, § 6, eff from and after July 1, 1988.

Cross References — Penalties for violations, see § 79-22-29.

Application to the catfish farming industry, see § 79-22-33.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-13. Nonrenewal of permit.

Failure by an aquaculturist to provide any information required by the department to verify that cultured aquatic products are produced under controlled aquacultural conditions and are not harvested from native wild stock shall result in nonrenewal, suspension or cancellation of the permit. The department is authorized, subject to the requirements set forth in the Mississippi Administrative Procedures Law, to promulgate reasonable rules and regulations to carry out the provisions of this chapter. Other state agencies, at the request of the department, shall assist in the promulgation of such regulations by providing technical expertise or such other assistance as, in the department's discretion, may be required.

SOURCES: Laws, 1988, ch. 481, § 7; Laws, 1993, ch. 457, § 4, eff from and after July 1, 1993.

Cross References — Mississippi Administrative Procedures Law, see §§ 25-43-1 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-15. Issuance of permits for taking of game fish for brood stock; promulgation of regulations; issuance of cultivation and marketing permits; inspections.

(1) The Department of Wildlife, Fisheries and Parks may issue permits to obtain game fish for use as brood stock in accordance with regulations promulgated by the Department of Wildlife, Fisheries and Parks.

(2) In promulgating these regulations for game fish used for brood stock, the Commission on Wildlife, Fisheries and Parks may specify that a permittee:

- (a) Obtain a temporary variance permit from the department;
- (b) Provide compensation for each fish taken for brood stock as established by the department and outlined in the permit; and
- (c) Shall not sell or transport out of the state brood fish taken from state waters.

(3) The Department of Wildlife, Fisheries and Parks shall not permit the collecting of wild brood stock in any waters where the wildlife department determines that the collection is not in the long-term best interest of the resource.

(4) The Department of Marine Resources may issue permits to obtain estuarine and marine brood stock. The commission may promulgate regulations for such permits and may require a permittee to meet any requirements listed in subsection (2).

(5) The Commission on Wildlife, Fisheries and Parks and the Commission on Marine Resources may promulgate regulations which specify design criteria to protect the resources within their jurisdiction and to prevent the release of undesirable species from an aquaculture facility into the environment. The Department of Wildlife, Fisheries and Parks and the Department of Marine Resources may advise the Department of Agriculture and Commerce in issuing cultivation and marketing permits. The permits shall be issued in accordance with the applicable regulations. The Department of Wildlife, Fisheries and Parks, the Department of Marine Resources or the Department of Agriculture and Commerce may inspect operations licensed by cultivation and marketing permits. Any violations of the regulations promulgated by the Commission on Wildlife, Fisheries and Parks or the Commission on Marine Resources shall be punishable as provided in Section 79-22-29.

SOURCES: Laws, 1988, ch. 481, § 8; Laws, 1991, ch. 530, § 4; Laws, 1999, ch. 337, § 1, eff from and after passage (approved Mar. 12, 1999.)

Cross References — Catfish Marketing Law, see §§ 69-7-601 et seq.

Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Penalties for violations, see § 79-22-29.

Application to the catfish farming industry, see § 79-22-33.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-17. Building requirements.

The department shall issue a cultivation permit for any aquaculture facility located, in whole or in part, in the Mississippi Sound, the Gulf of Mexico, or bays or estuaries thereof at such time that such facility complies with all state and federal requirements to protect marine resources.

SOURCES: Laws, 1988, ch. 481, § 9; Laws, 1993, ch. 457, § 5, eff from and after July 1, 1993.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§§ 79-22-19 and 79-22-21. Repealed.

Repealed by Laws, 1993, ch. 457, § 10, eff from and after July 1, 1993.

§ 79-22-19. [Laws, 1988, ch. 481, § 10]

§ 79-22-21. [Laws, 1988, ch. 481, § 11]

Editor's Note — Former § 79-22-19 related to one-stop permitting for aquaculture activities.

Former § 79-22-21 related to the compliance of aquacultural operations with applicable regulations from the Department of Environmental Quality and Department of Health.

§ 79-22-23. Leasing waters; aquaculture lease management program.

(1) The Secretary of State, upon recommendation of the Mississippi Department of Marine Resources and the Mississippi Department of Environmental Quality may lease waters as provided by Section 29-1-107, Mississippi Code of 1972, within the jurisdiction of the state to a person for aquaculture or the production of aquatic products. The Department of Marine Resources is authorized to develop a marine aquaculture lease management program and may adopt such rules and regulations as may be necessary to implement the marine aquaculture lease management program and to regulate the growth of aquaculture.

(2) All state and governmental entities that are involved in the regulation and enforcement of marine aquaculture activities or related activities shall develop a coordinated procedure for one-stop permitting applicable to marine aquaculture activities. One-stop permitting is defined as a procedure that allows an aquaculturist to fill out a joint application form and deposit it with any of the aforementioned governmental agencies. The receiving agency shall forward the joint application or copies of it to the appropriate entities for review and expeditious action. The one-stop permitting procedure document shall state the time schedules for review and action by the applicable agencies after the permit has been received and dated.

SOURCES: Laws, 1988, ch. 481, § 12; Laws, 1993, ch. 457, § 6; Laws, 1999, ch. 337, § 2, eff from and after passage (approved Mar. 12, 1999.)

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-25. Management plan to be developed; Aquatic Ventures Center.

The department may, as funds are made available by the Legislature, develop an Aquatic Ventures Center.

The center may develop but shall not be limited to the following activities:

(a) Plan and conduct a program promoting cultured aquatic products and associated technologies, including demonstration, training and technical assistance;

(b) Disseminate information about the technologies and species suitable for Mississippi and provide informal education relative thereto;

(c) Produce and coordinate the production of species of aquatic products that can be introduced into the state's waters, particularly its marine waters, to increase recreational and commercial fishing opportunities;

(d) Encourage expanding or new aquaculture activities which add to the economy of the state;

(e) Provide an opportunity for all state agencies, universities and colleges and federal agencies that are involved in activities that relate directly or indirectly to aquaculture to participate in the Center's program and to display their products;

(f) Maintain a coordinated liaison with other aquacultural enterprises, including federal agencies;

(g) Provide opportunity for Mississippi aquaculture associations to participate in the Center's program to advertise their cultured aquatic products.

(h) Provide for increased opportunities to market all Mississippi cultured aquatic products.

(i) Increase tourism to Mississippi by attracting tourists to visit the Center, to stay in hotels and to utilize restaurants and the services provided by other Mississippi businesses.

(j) Inform aquaculturists of the availability of forming aquatic products marketing associations under the state "Co-operative Aquatic Products Marketing Law" and, as needed, aid them in forming such associations.

(k) Encourage and authorize the establishment of commercial aquaculture parks where a number of entrepreneur aquaculturists can establish aquaculture ventures. All Mississippi governmental entities, universities and colleges shall provide coordinated support for investors who are citizens of the United States and would like to establish a commercial aquaculture park in Mississippi and who intend to provide for innovative and effective coordinated efforts within the park, as well as among other parks, relative to water resources utilization, production, processing and marketing applicable to cultured aquatic products.

The department may solicit and accept financial and professional support from any private or public sources, including the federal government.

SOURCES: Laws, 1988, ch. 481, § 13; Laws, 1993, ch. 457, § 7, eff from and after July 1, 1993.

Cross References — Catfish Marketing Law, see §§ 69-7-601 et seq.

Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-27. Order to stop sale or distribution of product found in violation of chapter.

The Commissioner of Agriculture and Commerce is authorized, in his discretion, to issue an order to stop the sale or distribution of any product found to be in violation of this chapter. Any order to stop the sale of any product regulated under the provisions of this chapter may be appealed to the Chancery Court of the First Judicial District of Hinds County or the chancery court in the county where the violation occurred within thirty (30) days of receipt of such order.

SOURCES: Laws, 1988, ch. 481, § 14; Laws, 1993, ch. 457, § 8, eff from and after July 1, 1993.

Cross References — Catfish Marketing Law, see §§ 69-7-601 et seq.

Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Penalties for violations of this chapter, see § 79-22-27.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-29. Penalties.

Any person violating this chapter or any regulation of the department issued under this chapter shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00) for each violation nor less than Two Hundred Fifty Dollars (\$250.00). In the case of a violation involving the marketing of non-cultured game fish, each fish is counted as a separate violation. When necessary to effect the purposes of this chapter, in addition to all other remedies in law or equity, the Commissioner of Agriculture and Commerce may petition the chancery court for an injunction to prevent any violation of the provisions of this chapter, or the continuance of any such violation, or to enforce compliance herewith. The chancery court is hereby vested with authority to enter jurisdiction on any such petition to determine the cause and to issue process as may be necessary to accomplish the purposes of this chapter. Nothing in this chapter shall be construed as exempting any aquaculture facility from local, state or federal requirements applicable to such facilities.

SOURCES: Laws, 1988, ch. 481, § 15; Laws, 1993, ch. 457, § 9, eff from and after July 1, 1993.

Cross References — Enforcement of section against operations violating regulations governing cultivation and marketing permittees, see § 79-22-15.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-31. Application to state educational institutions.

State educational institutions shall be subject to the above regulations but shall be exempt from fees.

SOURCES: Laws, 1988, ch. 481, § 16, eff from and after July 1, 1988.

Cross References — Fees, see § 79-22-9.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-33. Application to catfish farming industry.

This chapter shall not apply to the catfish farming industry and the provisions of this chapter shall not be construed to regulate the growing, farming, harvesting, processing and sale of catfish or catfish products which are harvested from privately owned ponds and have been fed commercially prepared feed and have been subject to a quality check before harvesting and processing.

SOURCES: Laws, 1988, ch. 481, § 17, eff from and after July 1, 1988.

Cross References — Catfish Marketing Law, see §§ 69-7-601 et seq.

Mississippi Catfish Processor Fair Practices Act, see §§ 69-7-651 et seq.

Federal Aspects — National Aquaculture Act of 1980, see 16 USCS §§ 2801 et seq.

RESEARCH REFERENCES

Am Jur. 35A Am. Jur. 2d, Fish and Game § 78.

§ 79-22-35. Tilapia products; labeling; penalties.

(1) No tilapia products shall be offered for direct sale for human consumption by a processor, distributor or retailer unless the tilapia product name is specifically labeled in the following manner:

(a) "FARM-RAISED TILAPIA," if the product has been produced under the authority of a permit issued in accordance with the Mississippi Aquaculture Act of 1988; or similar tilapia products produced under comparable conditions in any one (1) of the other states of the United States of America.

(b) "IMPORTED TILAPIA," provided the tilapia is produced from freshwater or salt water either according to the usual and customary technique of aquaculture or from freshwater lakes, rivers or streams of a country other than the United States of America.

(2) Any retailer selling tilapia products not wrapped or in a container may comply with this section by placing a sign on the display case or refrigeration unit reasonably visible to the consumer, giving notice that such tilapia is either "Farm-Raised Tilapia" or "Imported Tilapia" as such products are defined in subsection (1) of this section.

(3) The Commissioner of Agriculture and Commerce may promulgate such rules and regulations as may be necessary for the efficient enforcement of this section.

(4) Before the issuance, amendment, or repeal of any rule or regulation authorized by this chapter, the commissioner shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time. After consideration of all views presented by interested persons, the commissioner shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

(5) The commissioner shall issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any lot of tilapia and to hold the tilapia at a designated place when the commissioner finds that the tilapia is being offered or exposed for sale in violation of any of the provisions of this chapter until the law has been complied with and the tilapia is released in writing by the commissioner, or the violation has been otherwise legally disposed of by written authority. The commissioner shall release the tilapia so withdrawn when he determines that such tilapia is in compliance with all provisions of this chapter.

(6) The commissioner shall have authority to publish the names and addresses of violators and such information pertaining to violations of this chapter as he deems appropriate.

(7) Any person who violates any provision of this chapter or which no other civil penalty is provided by this chapter shall, upon conviction, be subject to a fine of not more than Five Hundred Dollars (\$500.00); however, no person shall be subject to penalties under this section for receiving for transportation

any article in violation of this chapter, if such receipt was made in good faith, unless such person refuses to furnish, on request of a representative of the commissioner, the name and address of the person from whom he received such article, and copies of all documents, if any, pertaining to the delivery of the article to him.

(8) Nothing in this chapter shall be construed as requiring the commissioner to report for prosecution or for the institution of libel or injunction proceedings minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

(9) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for such prosecution, an opportunity shall be given to the affected parties to present their views to the commissioner.

SOURCES: Laws, 1992, ch. 403, § 1; Laws, 1997, ch. 374, § 1, eff from and after July 1, 1997.

Cross References — Mississippi Aquaculture Act of 1988, see §§ 79-22-1 et seq.

CHAPTER 23

Commercial and Proprietary Information

SEC.

79-23-1. Commercial and financial information exempt from provisions of public access; application of Trade Secrets Act.

§ 79-23-1. Commercial and financial information exempt from provisions of public access; application of Trade Secrets Act.

(1) Commercial and financial information of a proprietary nature required to be submitted to a public body, as defined by paragraph (a) of Section 25-61-3, by a firm, business, partnership, association, corporation, individual or other like entity, shall be exempt from the provisions of the Mississippi Public Records Act of 1983; provided, however, that nothing herein shall be construed to deny access to such information submitted to a regulatory agency by a public utility that is related to the establishment of, or changes in, rates regulated by such agency.

(2) Nothing in this section shall be construed to deny a public utility the right to protect trade secrets or confidential commercial or financial information, as provided in subsection (1) of Section 25-61-9.

(3) Trade secrets and confidential commercial and financial information of a proprietary nature developed by a college or university under contract with a firm, business, partnership, association, corporation, individual or other like entity shall be exempt from the provisions of the Mississippi Public Records Act of 1983.

(4) Misappropriation of a trade secret shall be governed by the provisions of Mississippi Uniform Trade Secrets Act, Section 75-26-1 through 75-26-19.

SOURCES: Laws, 1983, ch. 424, § 22; Laws, 1988, ch. 406, § 2; Laws, 1990, ch. 442, § 17, eff from and after July 1, 1990.

Cross References — Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

ATTORNEY GENERAL OPINIONS

Based on Section 79-23-1, the Joint Water Management District may deny access to public records if it finds, consistent with fact, that they constitute commercial or financial information of a proprietary nature required to be submitted by third parties to the District. Griffith, December 6, 1996, A.G. Op. #96-0761.

Records request for lists of names, addresses, phone numbers and other personal identifying data, under the Mississippi Public Records Act of 1983 should not be disclosed absent express permission or waiver from the provider of the information. See Section 79-23-1. Griffith, December 6, 1996, A.G. Op. #96-0761.

RESEARCH REFERENCES

ALR. Bank's liability, under state law, for disclosing financial information concerning depositor or customer. 81 A.L.R.4th 377.

JUDICIAL DECISIONS

1. Information not disclosed.

Animal rights organization failed to rebut the evidence presented by the university and the company that the data and information requested in the subject records constituted trade secrets and/or confidential commercial and financial information of a proprietary nature developed by the university under contract with the company; therefore, the data and information requested by the organization was exempted from the provisions of the Mississippi Public Records Act, in harmony with applicable federal law, Miss. Code Ann. §§ 25-61-9, through 25-61-13, 79-23-1(3), and 7 U.S.C.S. § 2143(a)(6)(B). Miss. State Univ. v. Peo-

ple for the Ethical Treatment of Animals, Inc., 992 So. 2d 595 (Miss. 2008).

Publisher was unable to obtain the amount that a utility charged a third party because the information was exempt from disclosure as confidential under Miss. Code Ann. § 79-23-1; the utility had followed the procedures to protect the document under Miss. Code Ann. § 25-61-9(1) and Miss. Pub. Serv. Comm'n R. Prac. & P. 4D, 4I; moreover, the amount charged did not meet the definition of rate under Miss. Code Ann. § 77-3-3(e) because it was a privately negotiated agreement. Gannett River States Publ. Co. v. Entergy Miss., Inc., 940 So. 2d 221 (Miss. 2006).

CHAPTER 25

Mississippi Shareholder Protection Act

SEC.

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| 79-25-1. | Short title. |
| 79-25-3. | Definitions. |
| 79-25-5. | Voting requirements. |
| 79-25-7. | Exceptions to voting requirements. |
| 79-25-9. | Severability. |

§ 79-25-1. Short title.

This chapter may be cited as the "Mississippi Shareholder Protection Act".

SOURCES: Laws, 1985, ch. 449, § 1, eff from and after July 1, 1985.

Cross References — Control Share Act as not precluding simultaneous application of provisions of Control Share Act and Shareholder Protection Act, see § 79-27-11.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 642 et seq.	CJS. 18 C.J.S., Corporations §§ 568-582.
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§ 79-25-3. Definitions.

In Sections 79-25-3 through 79-25-9, the following terms have the meanings ascribed herein:

(a) "Affiliate," including the term "affiliated person," means a person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified person.

(b) "Announcement date" means the first general public announcement of the proposal or intention to make a proposal of a business combination or its first communication generally to shareholders of the corporation, whichever is earlier.

(c) "Associate," when used to indicate a relationship with any person, means:

(i) Any corporation or organization (other than the corporation or a subsidiary of the corporation) of which such person is an officer, director or partner, or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities;

(ii) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

(iii) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the corporation or any of its affiliates.

(d) "Beneficial owner," when used with respect to any voting stock, means a person:

(i) That, individually or with any of its affiliates or associates, beneficially owns voting stock, directly or indirectly; or

(ii) That, individually or with any of its affiliates or associates, has:

(A) The right to acquire voting stock (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; or

(B) The right to vote voting stock pursuant to any agreement, arrangement or understanding; or

(iii) That has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting, exercising investment power over, or disposing of voting stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such shares of voting stock.

(e) "Business combination" means:

(i) Subject to the limitations provided in Sections 79-33-1 through 79-33-9, unless the merger, consolidation or share exchange does not alter the contract rights of the stock as expressly set forth in the certificate of incorporation or change or convert in whole or in part any of the outstanding shares of stock of the corporation, any merger, consolidation, share exchange or similar transaction of the corporation or any subsidiary with any interested shareholder or any other corporation (whether or not itself an interested shareholder) which is, or after the merger, consolidation or share exchange would be, an affiliate of an interested shareholder that was an interested shareholder prior to the transaction; or

(ii) Any sale, lease, transfer or other disposition, other than in the ordinary course of business, in one transaction or a series of transactions, to or with any interested shareholder or any affiliate of any interested shareholder (other than the corporation or any of its subsidiaries) of any assets of the corporation or any subsidiary having, at the time the transactions are approved by the board of directors of the corporation, an aggregate market value of twenty percent (20%) or more of the total market value of the outstanding stock of the corporation or of its assets, all as of the end of its most recently ended fiscal quarter, whichever is lower; or

(iii) The issuance or transfer by the corporation, or any subsidiary (in one transaction or a series of transactions) of any securities of the corporation or any subsidiary which have an aggregate market value of five percent (5%) or more of the total market value of the outstanding stock of the corporation to any interested shareholder or any affiliate of any interested shareholder (other than the corporation or any of its subsidiaries), except pursuant to the exercise of warrants or rights to purchase securities offered pro rata to all holders of the corporation's voting stock or any other method affording substantially equal treatment to the holders of voting stock; or

(iv) The adoption of any plan or proposal for the liquidation, dissolution of or similar transaction involving the corporation in which anything

other than cash will be received by an interested shareholder or any affiliate or any interested shareholder; or

(v) Any reclassification of securities (including any reverse stock split), or recapitalization of the corporation, or any merger, consolidation or share exchange of the corporation with any of its subsidiaries which has the effect, directly or indirectly, in one transaction or a series of transactions, of increasing by five percent (5%) or more of the total number of outstanding shares, the proportionate share of the outstanding shares of any class of equity securities of the corporation or any subsidiary which is directly or indirectly owned by any interested shareholder or any affiliate or associate of any interested shareholder, except as a result of immaterial changes due to fractional share adjustments.

(f) "Common stock" means any stock other than preferred or preference stock.

(g) "Continuing director" means any member of the board of directors of the corporation, while such person is a member of the board of directors, who is not an affiliate or associate or representative of the interested shareholder and was a member of the board of directors prior to the time that the interested shareholder became an interested shareholder, and any successor of a continuing director, while such successor is a member of the board of directors, who is not an affiliate or associate or representative of the interested shareholder and is recommended or elected to succeed the continuing director by a majority of continuing directors.

(h) "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly, indirectly or beneficially, of the power, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. The beneficial ownership of ten percent (10%) or more of the votes entitled to be cast by a corporation's voting stock creates a presumption of control.

(i) "Corporation," means any domestic corporation, as defined in Section 79-3-3(a), Mississippi Code of 1972, which corporation's principal place of business is located in Mississippi or which corporation has substantial assets in Mississippi, provided that such corporation has securities listed on a securities exchange registered under the Securities Exchange Act of 1934.

A corporation shall not include:

(i) Any state or national bank or any bank holding company or any affiliate thereof authorized by the appropriate regulatory authority to be owned by any of the above; or

(ii) Any state or federal savings and loan association, savings bank or similar savings institution, and any holding company or other affiliate of any state or federal savings and loan association, savings bank or similar savings institution.

(j) "Determination date" means the date on which an interested shareholder first became an interested shareholder.

(k) "Equity security" or "security" means:

(i) Any stock or similar security, certificate of interest, or participation in any profit sharing agreement, voting trust certificate, or certificate of deposit for an equity security;

(ii) Any security convertible, with or without consideration, into an equity security, or any warrant or other security carrying any right to subscribe to or purchase an equity security; or

(iii) Any put, call, straddle or other option or privilege of buying an equity security from or selling an equity security to another without being bound to do so.

(l) "Interested shareholder" means any person or associated group of persons acting in concert (other than the corporation and/or any subsidiaries) that:

(i) Is the beneficial owner, directly or indirectly, of twenty percent (20%) or more of the voting power of the outstanding voting stock of the corporation; or

(ii) Is an affiliate of the corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of twenty percent (20%) or more of the voting power of the then outstanding voting stock of the corporation.

For the purpose of determining whether a person or group of persons is an interested shareholder, the number of shares of voting stock deemed to be outstanding shall include shares deemed owned by the person or group of persons through application of paragraph (d) of this subsection.

(m) "Market value" means:

(i) In the case of stock, the highest closing sale price during the thirty-day period immediately preceding the date in question of a share of such stock on the composite tape for New York Exchange listed stocks, or, if such stock is not quoted on the composite tape, on the New York Stock Exchange, or if such stock is not listed on such exchange, on the principal United States Securities Exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the thirty-day period preceding the date in question on the National Association of Securities Dealers, Inc., automated quotations system or any system then in use.

(ii) In the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the continuing directors of the corporation in good faith.

(n) "Subsidiary" means any corporation of which voting stock having a majority of the voting stock is owned, directly or indirectly, by the corporation.

(o) "Valuation date" means:

(i) For a business combination voted upon or consented to by shareholders, the latter of the day prior to the date of the shareholders vote or consent or the day twenty (20) days prior to the consummation of the business combination; and

(ii) For a business combination not voted upon or consented to by shareholders, the date of the consummation of the business combination.

(p) "Voting stock" means shares of capital stock of the corporation entitled to vote generally in the election of directors.

SOURCES: Laws, 1985, ch. 449, § 2(1); Laws, 1987, ch. 479; Laws, 2004, ch. 353, § 9, eff from and after passage (approved Apr. 20, 2004.)

Cross References — Corporate successor asbestos-related liability in connection with merger or consolidations, see §§ 79-33-1 et seq.

Federal Aspects — The Securities Exchange Act of 1934 is codified at 15 USCS §§ 78a et seq.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations §§ 642 et seq. **CJS.** 18 C.J.S., Corporations §§ 568-582.

§ 79-25-5. Voting requirements.

In addition to any vote otherwise required by law, by the certificate of incorporation of the corporation, or by the bylaws of the corporation, a business combination shall be approved by the affirmative vote of at least:

(a) Eighty percent (80%) of the votes entitled to be cast by outstanding shares of voting stock of the corporation, voting together as a single class; and

(b) Two-thirds ($\frac{2}{3}$) of the votes entitled to be cast by holders of voting stock other than voting stock held by the interested shareholder who is (or whose affiliate or associate is) a party to the business combination or an affiliate or associate of the interested shareholder, voting together as a single class.

SOURCES: Laws, 1985, ch. 449, § 2(2), eff from and after July 1, 1985.

Cross References — Exceptions to voting requirements, see § 79-25-7.

Federal Aspects — Provisions of the Investment Company Act of 1940, see 15 USCS §§ 80a-1 et seq.

RESEARCH REFERENCES

ALR. Validity of variations from one share-one vote rule under modern corporate law. 3 A.L.R.4th 1204. **Am Jur.** 18A Am. Jur. 2d, Corporations §§ 850 et seq.

§ 79-25-7. Exceptions to voting requirements.

(a) The provisions of Section 79-25-5 shall not apply to a business combination involving receipt of consideration in exchange for or in respect of the corporation's stock or assets in the circumstances specified in subsection (b)

or (c) of this section or to a corporation meeting one (1) of the requirements of subsection (d) of this section.

(b) The vote required by Section 79-25-5 is not required if each of the following conditions is met:

(i) The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of common stock in such business combination is at least equal to the highest of the following:

(A) The highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested shareholder for any shares of common stock of the same class or series acquired by it

(1) Within the two-year period immediately prior to the announcement date of the proposal of the business combination, or

(2) In the transaction in which it became an interested shareholder, whichever is higher; or

(B) The market value per share of common stock of the same class or series on the announcement date or on the determination date, whichever is higher; or

(C) The price per share equal to the market value per share of common stock of the same class or series determined pursuant to subsection (b)(i)(B) of this section, multiplied by the fraction of:

(1) The highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested shareholder for any shares of common stock of the same class or series acquired by it within the two-year period prior to the announcement date; over

(2) The market value per share of common stock of the same class or series on the first day in such two-year period on which the interested stockholder acquired his stock.

(ii) The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of shares of any class or series of outstanding stock other than common stock is at least equal to the highest of the following (whether or not the interested shareholder has previously acquired any shares of a particular class or series of stock):

(A) The highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested shareholder for any shares of such class of stock acquired by it

(1) Within the two-year period immediately prior to the announcement date of the proposal of the business combination, or

(2) In the transaction in which it became an interested shareholder, whichever is higher; or

(B) The highest preferential amount per share to which the holders of shares of such class of stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation; or

(C) The market value per share of such class of stock on the announcement date or on the determination date, whichever is higher; or

(D) The price per share equal to the market value per share of such class of stock determined pursuant to subsection (b)(ii)(c) of this section, multiplied by the fraction of:

(1) The highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the interested shareholder for any shares of any class of voting stock acquired by it within the two-year period immediately prior to the announcement date; over

(2) The market value per share of the same class of voting stock on the first day in such two-year period on which the interested shareholder acquired any shares of the same class of voting stock.

(iii) The consideration to be received by holders of any class or series of outstanding stock is to be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series of stock. If the interested shareholder has paid for shares of any class of stock with varying forms of consideration, the form of consideration for such class of stock shall be either cash or the form used to acquire the largest number of shares of such class or series of stock previously acquired by it. In making any price calculation under subsection (a) of this section, appropriate adjustments shall be made to reflect any reclassification, stock dividend, stock split, recapitalization or similar transaction which may increase or reduce the number of outstanding shares of any class or series of stock of the corporation.

(iv) After the interested shareholder has become an interested shareholder and prior to the consummation of such business combination:

(A) There shall have been no failure to declare and pay at the regular date therefor any full periodic dividends (whether or not cumulative) on any outstanding preferred stock of the corporation.

(B) There shall have been:

(1) No reduction in the annual rate of dividends paid on any class or series of stock of the corporation that is not preferred stock of the corporation (except as necessary to reflect any subdivision of the stock); and

(2) An increase in such annual rate of dividends as necessary to reflect any reclassification, stock dividend, stock split, recapitalization, reorganization or any similar transaction, which has the effect of reducing the number of outstanding shares of the stock.

(C) The interested shareholder shall not have become the beneficial owner of any additional shares of stock of the corporation except as part of the transaction which resulted in such interested shareholder becoming an interested shareholder or by virtue of proportionate stock splits or stock dividends.

(v) After the interested shareholder has become an interested shareholder, the interested shareholder shall not have received the benefit,

directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages, provided by the corporation or any of its subsidiaries, whether in anticipation of or in connection with such business combination or otherwise.

(c) Whether or not such business combinations are consummated in whole or in part after July 1, 1985, or after the interested shareholder became an interested shareholder, the requirements of Section 79-25-5, do not apply to business combinations that specifically, generally, or generally by types, as to specifically identified or unidentified existing or future interested stockholders or their affiliates, have been approved or exempted therefrom by resolution approved by at least eighty percent (80%) of the continuing directors of the corporation.

(d) Unless the certificate of incorporation of the corporation provides otherwise, the requirements of subsection (2) of this section do not apply to any business combination of:

(i) A corporation having fewer than five hundred (500) beneficial owners of its stock; or

(ii) A corporation which elects not to be governed by the requirements of Section 79-25-5 by the adoption, upon a majority vote of its shareholders, of an amendment to its certificate of incorporation within one (1) year from and after July 1, 1985, for existing corporations, or within one (1) year from and after the date of incorporation for corporations organized after July 1, 1985; or

(iii) An investment company registered under the Investment Company Act of 1940; or

(iv) Any state or national bank or any bank holding company or any affiliate thereof authorized by the appropriate regulatory authority to be owned by any of the above; or

(v) Any state or federal savings and loan association, savings bank or similar savings institution, and any holding company or other affiliate of any state or federal savings and loan association, savings bank or similar savings institution.

SOURCES: Laws, 1985, ch. 449, § 2(3), eff from and after July 1, 1985.

Cross References — Investment Company Act of 1940 generally, see 15 USCS §§ 80(a)-1 et seq.

§ 79-25-9. Severability.

In the event that any portion or provision of the Mississippi Shareholder Protection Act (Sections 79-25-1 et seq.) is void, invalid, invalidated or otherwise found to be unenforceable for any reason, such portion or provision shall be deleted from the act and each and all of the remaining portions or

provisions of the act shall remain effective, and the act shall be interpreted as if the void, invalid or unenforceable portion or provision never existed.

SOURCES: Laws, 1985, ch. 449, § 2(4), eff from and after July 1, 1985.

CHAPTER 27

Mississippi Control Share Act

SEC.

- 79-27-1. Short title.
79-27-3. Application of chapter; election to be subject to chapter.
79-27-5. Definitions.
79-27-7. Voting power of control shares.
79-27-9. Disclosure requirements when acquiring control shares; special meeting of shareholders; notice; proxies; voting on resolution in disclosure statement; competing control share acquisition.
79-27-11. Acquisition of control shares at time when corporation was not subject to chapter, or pursuant to contract entered into at time when corporation was not subject to chapter.

§ 79-27-1. Short title.

This chapter shall be known and may be cited as the “Mississippi Control Share Act.”

SOURCES: Laws, 1990, ch. 411, § 1, eff from and after January 1, 1991.

Editor’s Note — Laws of 1990, ch. 411, § 8, provides as follows:

“SECTION 8. The provisions of this act are severable. If any provision is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.”

Cross References — Shareholders rights to dissent, see § 79-4-13.01.

§ 79-27-3. Application of chapter; election to be subject to chapter.

(1) This chapter applies to all issuing public corporations in existence on and after January 1, 1991.

(2) A domestic corporation that is not an issuing public corporation but that has one hundred (100) or more shareholders of record and meets one (1) of the requirements set forth in Section 79-27-5(g)(i)(B), or an issuing public corporation to which this chapter does not apply, may elect to be subject to this chapter as an issuing public corporation by amending its articles of incorporation to provide that this chapter shall apply to the corporation as of a specified date and filing the amendment in the office of the Secretary of State on or before such date. Any corporation so electing shall be an “issuing public corporation” for purposes of this chapter.

SOURCES: Laws, 1990, ch. 411, § 2, eff from and after January 1, 1991.

Editor’s Note — Laws, 1990, ch. 411, § 8, provides as follows:

“SECTION 8. The provisions of this act are severable. If any provision is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.”

§ 79-27-5. Definitions.

As used in this chapter:

(a) "Acquiring person" means a person who makes or proposes to make, or persons acting as a "group" as defined in Section 13(d)(3) of the Securities Exchange Act of 1934 who make or propose to make, a control share acquisition; but "acquiring person" does not include the issuing public corporation.

(b) "Affiliate" means a person who directly or indirectly controls the corporation. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the corporation, whether through the ownership of voting securities, by contract, or otherwise. A person's beneficial ownership of ten percent (10%) or more of the voting power of a corporation's outstanding shares entitled to vote in the election of directors (except a person holding voting power in good faith as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group control the corporation) creates a presumption that the person controls the corporation.

(c) "All voting power" means the aggregate voting power that the shareholders of an issuing public corporation would have in the election of directors, except for this chapter.

(d) "Control shares" means issued and outstanding shares of an issuing public corporation that, except for this chapter, would have voting power when added to all other shares of the issuing public corporation owned of record or beneficially by an acquiring person or in respect to which that acquiring person may exercise or direct the exercise of voting power, that would entitle the acquiring person, immediately after acquisition of the shares (directly or indirectly), to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

(i) One-fifth ($\frac{1}{5}$) or more but less than one-third ($\frac{1}{3}$) of all voting power;

(ii) One-third ($\frac{1}{3}$) or more but less than a majority of all voting power; or

(iii) A majority or more of all voting power.

(e)(i) "Control share acquisition" means acquisition by any person of ownership of, or the power to direct the exercise of voting power with respect to, control shares.

(ii) A person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this chapter has not made a control share acquisition of shares in respect of which that person is not able to exercise or direct the exercise of votes without further instruction from others.

(iii) The acquisition of any control shares does not constitute a control share acquisition if the acquisition is made in good faith and not for the purpose of circumventing this chapter in any of the following circumstances:

(A) At a time when the corporation was not subject to this chapter.

(B) Pursuant to a contract entered into at a time when the corporation was not subject to this chapter.

(C) Pursuant to the laws of descent and distribution under Section 91-1-1 et seq., Mississippi Code of 1972.

(D) By a donee under an inter vivos gift.

(E) Pursuant to a transfer between or among immediate family members, or between or among persons under direct common control. An "immediate family member" is any relative or spouse of a person, or any relative of such spouse, who has the same home as such person.

(F) Pursuant to the satisfaction of a pledge or other security interest.

(G) Pursuant to a merger or plan of consolidation or share exchange effected in compliance with Section 79-4-11.01 et seq., Mississippi Code of 1972, if the issuing public corporation is a party to the agreement of merger or plan of consolidation or share exchange.

(H) From any person whose previous acquisition of control shares would have constituted a control share acquisition but for this paragraph (e)(iii) (other than this paragraph (e)(iii)(H)), provided the acquisition does not result in the acquiring person holding voting power within a higher range of voting power than that of a person from whom the control shares were acquired.

(I) Acquisition by a person of additional shares within the range of voting power for which such person has received approval pursuant to Section 79-27-9 or within the range of voting power resulting from shares acquired in a transaction described in this paragraph (e)(iii).

(J) An increase in voting power resulting from any action taken by the issuing public corporation.

(K) Pursuant to the solicitation of proxies subject to Regulation 14A under the Securities Exchange Act of 1934.

(L) Pursuant to the sale of such shares by the issuing public corporation or its parent or subsidiary corporation.

(f) "Interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise, as of the applicable record date, of the voting power of the corporation in the election of directors, other than solely by the authority of a revocable proxy:

(i) The acquiring person.

(ii) Any officer of the issuing public corporation.

(iii) Any employee of the issuing corporation who is also a director of the corporation.

(g)(i) "Issuing public corporation" means a domestic corporation that has:

(A) Any securities registered under Section 12 or is subject to Section 15(d) of the Securities Exchange Act of 1934; and

(B) Either:

1. More than ten percent (10%) of its shareholders resident in Mississippi;

2. More than ten percent (10%) of its shares owned by Mississippi residents; or

3. Five hundred (500) shareholders resident in Mississippi.

(ii) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(iii) Shares held by banks (except as trustee or guardian), brokers or nominees are disregarded for purposes of calculating the percentages and numbers in this paragraph (g).

(iv) An issuing public corporation shall not include:

(A) Any state or national bank or any bank holding company or any affiliate thereof authorized by the appropriate regulatory authority to be owned by any of the above; or

(B) Any state or federal savings and loan association, savings bank or similar savings institution, and any holding company or other affiliate of any state or federal savings and loan association, savings bank or similar savings institution.

(h) "Person" means any individual, corporation, partnership, unincorporated association or other entity.

SOURCES: Laws, 1990, ch. 411, § 3, eff from and after January 1, 1991.

Editor's Note — Laws, 1990, ch. 411, § 8, provides as follows:

"SECTION 8. The provisions of this act are severable. If any provision is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application."

Cross References — Election by corporation that is not an issuing public corporation and meets one of the requirements set forth in this section to be subject to this chapter as issuing corporation, see § 79-27-3.

Provisions applicable to all transactions that, but for this section, would be control share acquisitions, see § 79-27-11.

Federal Aspects — Securities Exchange Act of 1934 is codified as 15 USCS § 78a et seq.

RESEARCH REFERENCES

ALR. When is corporation close, or closely-held, corporation under common or statutory law. 111 A.L.R.5th 207.

§ 79-27-7. Voting power of control shares.

(1) Unless otherwise provided in the articles of incorporation before either a control share acquisition occurs or a disclosure statement is delivered, control shares that are the subject of a control share acquisition have only such voting rights as are accorded under this section.

(2) Subject to subsections (3) through (5) of this section, the voting power of control shares having voting power of one-fifth (1/5) or more of all voting

power is reduced to zero unless the shareholders of the issuing public corporation approve a resolution pursuant to the procedure set forth in Section 79-27-9 according the shares the same voting rights as they had before they became control shares.

(3) Except as provided in Section 79-27-9(6), the voting power of control shares representing voting power of less than one-fifth (1/5) of all voting power is not affected by this chapter.

(4) If control shares of the acquiring person previously have been accorded (pursuant to the procedure set forth in Section 79-27-9) the same voting rights they had before they became control shares, or if such control shares were acquired in a transaction excluded from the definition of "control share acquisition," then only the voting power of control shares acquired in a subsequent control share acquisition by such acquiring person within a higher range of voting power shall be reduced to zero.

(5) The voting rights of control shares are restored to those accorded such shares prior to the control share acquisition in any of the following circumstances: (a) if, by reason of subsequent issuance of shares or other transactions by the issuing public corporation, the voting power of those control shares is reduced to a range of voting power for which approval has been granted or is not required; or (b) upon transfer to a person other than an acquiring person; or (c) the expiration of three (3) years after the date of a vote of shareholders pursuant to Section 79-27-9 failing to approve the resolution according voting rights to those control shares.

SOURCES: Laws, 1990, ch. 411, § 4, eff from and after January 1, 1991.

Editor's Note — Laws, 1990, ch. 411, § 8, provides as follows:

"SECTION 8. The provisions of this act are severable. If any provision is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application."

Cross References — Application of this section to the contents of disclosure statement when acquiring control shares, see § 79-27-9.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 79-27-9. Disclosure requirements when acquiring control shares; special meeting of shareholders; notice; proxies; voting on resolution in disclosure statement; competing control share acquisition.

(1) Any acquiring person who proposes to make a control share acquisition may, and any acquiring person who has made a control share acquisition shall, publish in a newspaper of general circulation and deliver to the issuing

public corporation at its principal office a disclosure statement. To be regarded as a disclosure statement, the document must set forth all of the following:

- (a) The identity of the acquiring person;
- (b) A statement that the disclosure statement is delivered pursuant to this chapter;
- (c) The number of shares of the issuing public corporation owned (directly or indirectly) by the acquiring person, the acquisition dates and the prices at which such shares were acquired;
- (d) The voting power to which the acquiring person, except for Section 79-27-7, would be entitled;
- (e) A form of the resolution to be considered by the shareholders hereunder; and
- (f) If the control share acquisition has not yet occurred:
 - (i) A description in reasonable detail of the terms of the proposed control share acquisition; and
 - (ii) Representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

(2) If the directors of the issuing public corporation so order, or if the acquiring person so requests at the time of delivery of a disclosure statement and gives an undertaking to pay the issuing public corporation's expenses in connection therewith, a special meeting of shareholders of the issuing public corporation must be called within ten (10) days after delivery of the disclosure statement for the purpose of considering the resolution relating to the voting rights to be accorded the shares acquired or to be acquired in the control share acquisition. Unless both the acquiring person and the issuing public corporation agree in writing to another date, the special meeting of shareholders must be held not sooner than thirty (30) days nor later than fifty (50) days after receipt by the issuing public corporation of the request or order for a special meeting.

(3) If no special meeting of shareholders is called pursuant to subsection (2) of this section, the resolution relating to the voting rights to be accorded the shares acquired in the control share acquisition must be presented to the next special or annual meeting of shareholders.

(4) If a special meeting is called, notice of the special meeting of shareholders must be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting. If the special meeting was requested by the acquiring person, the directors shall set the record date on a date not later than fifteen (15) days after the request was received by the issuing public corporation.

(5) Notice of the special meeting, or the annual meeting if no special meeting is called, must include or be accompanied by:

- (a) A copy of the disclosure statement;

(b) A statement by the board of directors of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the resolution contained in the disclosure statement; and

(c) A description of any dissent and appraisal rights or any redemption procedure that may accompany or result from the vote of shareholders.

(6) Any other provisions of this chapter notwithstanding, a proxy relating to a meeting of shareholders to be held pursuant to this section must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation.

(7) All votes cast at the meeting for or against the resolution contained in the disclosure statement must be identified as noninterested shares. To be approved, the resolution must receive the affirmative votes of a majority of all voting power, excluding all interested shares. If the resolution is not approved, the acquiring person, not sooner than six (6) months thereafter, may present a new resolution for a vote of shareholders in accordance with this section at any subsequent shareholder meeting as long as the voting power of the control shares described in the resolution is reduced.

(8)(a) For purposes of this subsection, a “competing control share acquisition” means a control share acquisition that is the subject of a disclosure statement delivered to the issuing public corporation under subsection (1) of this section before a shareholder vote has been held under subsection (7) of this section with respect to a pending control share acquisition.

(b) A resolution relating to the voting rights of control shares that are the subject of a pending control share acquisition is not effective unless it receives approval pursuant to subsection (7) of this section and a resolution relating to the voting rights of control shares that are the subject of a competing control share acquisition does not receive such approval. If a resolution applicable to the competing control share acquisition is approved pursuant to subsection (7) of this section, only that resolution is effective.

(c) If a resolution relating to a pending control share acquisition has been approved pursuant to subsection (7) of this section before a disclosure statement with respect to another control share acquisition is delivered, the resolution is effective in restoring the voting rights of control shares that are the subject of the pending control share acquisition.

(d) If resolutions relating to two (2) or more control share acquisitions are subject to shareholder vote under subsection (7) of this section, shares held by an acquiring person are not considered interested shares with respect to a vote on a resolution relating to a competing control share acquisition.

(9) All provisions of the Mississippi Business Corporation Act, Section 79-4-1.01 et seq., Mississippi Code of 1972, that are not inconsistent with the procedures set forth in this section shall apply to the meeting of shareholders of the issuing public corporation.

SOURCES: Laws, 1990, ch. 411, § 5, eff from and after January 1, 1990.

Editor’s Note — Laws, 1990, ch. 411, § 8, provides as follows:

"SECTION 8. The provisions of this act are severable. If any provision is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application."

Cross References — Acquisition of control shares after receiving approval pursuant to this section as not constituting control share acquisition, see § 79-27-5.

Voting power of control shares, see § 79-27-7.

§ 79-27-11. Acquisition of control shares at time when corporation was not subject to chapter, or pursuant to contract entered into at time when corporation was not subject to chapter.

(1) This section applies to all transactions that, but for Section 79-27-5(e)(iii)(A) and (B), would be control share acquisitions in which:

(a) The acquiring person is or includes an affiliate of the issuing public corporation;

(b) The corporation has, by a provision in its articles of incorporation adopted within the prior twelve (12) months, elected not to be subject to this chapter; and

(c) The acquiring person has acquired a majority or more of all voting power.

(2) Within thirty (30) days after a control share acquisition subject to subsection (1) of this section, the acquiring person must make a written offer to purchase the shares of each remaining shareholder at a price at least equal to the highest price at which the control shares were acquired by the acquiring person within the twelve (12) months immediately preceding the offer.

(3) Nothing herein shall be construed to preclude the simultaneous application of this section and the Mississippi Shareholder Protection Act, Section 79-25-1 et seq., Mississippi Code of 1972.

SOURCES: Laws, 1990, ch. 411, § 6, eff from and after January 1, 1991.

Editor's Note — Laws, 1990, ch. 411, § 8, provides as follows:

"SECTION 8. The provisions of this act are severable. If any provision is invalid, or if its application to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application."

CHAPTER 29

Mississippi Limited Liability Company Act

Article 1.	General Provisions	79-29-101
Article 2.	Formation, certificate of formation	79-29-201
Article 3.	Members	79-29-301
Article 4.	Management	79-29-401
Article 5.	Finance	79-29-501
Article 6.	Distributions	79-29-601
Article 7.	Assignment of Limited Liability Company Interests	79-29-701
Article 8.	Dissolution	79-29-801
Article 9.	Professional Limited Liability Companies	79-29-901
Article 10.	Foreign Limited Liability Companies	79-29-1001
Article 11.	Derivative Actions	79-29-1101
Article 12.	Miscellaneous	79-29-1201

ARTICLE 1.

GENERAL PROVISIONS.

SEC.

79-29-101.	Short title.
79-29-102.	Reservation of power to amend or repeal.
79-29-103.	Definitions.
79-29-104.	Name.
79-29-105.	Reservation of name.
79-29-106.	Registered office and registered agent.
79-29-107.	Records to be kept.
79-29-108.	Nature of business; powers.
79-29-109.	Business transactions of member or manager with the limited liability company.
79-29-110.	Indemnification.
79-29-111.	Service on limited liability company.
79-29-112.	Taxation.

§ 79-29-101. Short title.

This chapter shall be known and may be cited as the “Mississippi Limited Liability Company Act.”

SOURCES: Laws, 1994, ch. 402, § 1, eff from and after July 1, 1994.

Cross References — Limited liability trust companies, see § 81-27-6.301 et seq.

JUDICIAL DECISIONS

Cited in: Hartwell Handle Co. v. Jack,
149 Miss. 465, 115 So. 586 (1928).

RESEARCH REFERENCES

ALR. Construction and application of limited liability company acts. 79 A.L.R.5th 689.

ited Liability Companies For Business and Estate Planning Purposes in Mississippi. 18 Miss. College L. R. 91, Fall 1997.

Law Reviews. Lee, The Future of Lim-

§ 79-29-102. Reservation of power to amend or repeal.

The Mississippi Legislature has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter are governed by the amendment or repeal.

SOURCES: Laws, 1994, ch. 402, § 2, eff from and after July 1, 1994.

§ 79-29-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Certificate of formation" means the certificate referred to in Section 79-29-201, and the certificate as amended or restated.

(b) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member.

(c) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission. If delivery is to the Secretary of State, delivery may be made by electronic transmission, if, to the extent, and in the manner permitted by the Secretary of State.

(d) "Derivative proceeding" means a civil suit in the right of a limited liability company or, to the extent provided in Article 10 of this chapter, in the right of a foreign limited liability company.

(e) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(f) "Entity" means any association or legal entity organized to conduct business, including, without limitation, for profit and nonprofit corporations, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, and business trusts.

(g) "Event of dissociation" means an event that causes a person to cease to be a member as provided in Section 79-29-307.

(h) "Foreign limited liability company" means an entity that is an unincorporated association organized under laws other than the laws of this state that affords to each of its members, pursuant to the laws under which it is organized, limited liability with respect to liabilities of the entity.

(i) "Interests" means the proprietary interests in an entity.

(j) "Limited liability company" and "domestic limited liability company" mean an entity having one or more members that is an unincorporated association that is formed and existing under this chapter.

(k) "Limited liability company agreement" means an agreement of the members as to the affairs of a limited liability company and the conduct of its business.

(l) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and the right to receive distributions of limited liability company assets.

(m) "Manager" or "managers" means a person or persons who are named in, or selected or designated pursuant to, the certificate of formation or limited liability company agreement to manage the limited liability company to the extent and as provided in the certificate of formation or limited liability company agreement.

(n) "Member" means a person that has been admitted to a limited liability company as provided in Section 79-29-301 or, in the case of a foreign limited liability company, in accordance with the laws under which the foreign limited liability company is organized, and that has not dissociated from the limited liability company.

(o) "Merger" means a business combination pursuant to Section 79-29-209.

(p) "Organizational documents" means the basic document or documents that create, or determine the internal governance of, an entity.

(q) "Person" means an individual, corporation, nonprofit corporation, business trust, estate, trust, partnership, limited partnership, association, joint venture, limited liability company, government, governmental subdivision or agency, any other legal or commercial entity, nominee or any individual or entity in any representative capacity.

(r) "Professional limited liability company" is a limited liability company formed and existing under Article 9 of this chapter.

(s) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

(t) "Survivor" in a merger means the entity into which one or more entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

SOURCES: Laws, 1994, ch. 402, § 3; Laws, 1995, ch. 494, § 64; Laws, 1997, ch. 418, § 25; Laws, 1998, ch. 376, § 4; Laws, 2000, ch. 469, § 42, eff from and after July 1, 2000.

ATTORNEY GENERAL OPINIONS

A community hospital is a governmental subdivision within the meaning of subsection (m) [present subsection (q)], and, because of the broad statutory powers granted to community hospitals, a com-

munity hospital may become a member of a limited liability company for the purpose of developing, owning, and operating an outpatient ambulatory surgery facility jointly with another limited liability com-

pany. Williamson, Feb. 4, 2000, A.G. Op. #2000-0021.

§ 79-29-104. Name.

(1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC";

(b) May contain the name of a member or manager;

(c) Except as authorized by subsection (2) of this section, must be distinguishable upon the records of the Secretary of State from (i) the name of any domestic or foreign corporation, nonprofit corporation, limited partnership or limited liability company organized or registered under the laws of this state; and (ii) a name reserved or registered in the office of the Secretary of State for any of the entities named in paragraph (1)(c)(i) of this section; and

(d) May not contain the following words: "bank," "banker," "bankers," "banking," "trust company," "insurance," "trust," "corporation," "incorporated," "partnership," "limited partnership," or any combination or abbreviation thereof, or any words or abbreviations of similar import.

(2) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (1)(c) of this section. The Secretary of State shall authorize the use of the name applied for if:

(a) The other domestic or foreign limited liability company, limited partnership, corporation or nonprofit corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or

(b) The applicant delivers to the office of the Secretary of State for filing a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

SOURCES: Laws, 1994, ch. 402, § 4; Laws, 1997, ch. 418, § 26, eff from and after July 1, 1997.

§ 79-29-105. Reservation of name.

(1) The exclusive right to the use of a name may be reserved by:

(a) A person intending to organize a limited liability company under this chapter and to adopt that name;

(b) A domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) A foreign limited liability company intending to register in this state and adopt that name; and

(d) A person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by delivering to the office of the Secretary of State for filing an application, signed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of one hundred eighty (180) days. Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty (60) days after the expiration of the last 180-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the office of the Secretary of State a notice of the transfer, signed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) The reservation of a specified name may be cancelled by delivering to the office of the Secretary of State a notice of cancellation, specifying the name reservation to be canceled and the name and address of the applicant or transferee.

SOURCES: Laws, 1994, ch. 402, § 5; Laws, 1997, ch. 418 § 27, eff from and after July 1, 1997.

§ 79-29-106. Registered office and registered agent.

(1) Each limited liability company must continuously maintain in this state:

(a) A registered office which may be the same as any of its places of business; and

(b) A registered agent for service of process on the limited liability company, which agent must be either an individual resident of this state, a domestic corporation, nonprofit corporation or limited liability company or a foreign corporation, nonprofit corporation or limited liability company authorized to transact business in this state; in each case whose business office is identical with the registered office.

(2) A limited liability company may change its registered office or registered agent by delivering to the office of the Secretary of State for filing a certificate that sets forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name of its current registered agent;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the certificate or a statement attached to it) to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(3) A registered agent may change its address to another address in this state by delivering to the office of the Secretary of State for filing a certificate, signed by such registered agent, setting forth: (a) the names of all the limited liability companies represented by such registered agent, (b) the address at which such registered agent has maintained its office for each of such limited liability companies, and (c) its new address which such registered agent will thereafter maintain for each of the limited liability companies recited in the certificate.

Upon filing this certificate, the Secretary of State will deliver to the registered agent a certified copy of the same and thereafter, or until further change of address, as authorized by law, the registered office of each of the limited liability companies recited in the certificate shall be located at the new address of the registered agent as given in the certificate. The filing by the Secretary of State of such certificate shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby. Any registered agent delivering a certificate to the office of the Secretary of State under this section shall promptly, upon such filing by the Secretary of State, deliver a copy of any such certificate to each limited liability company affected thereby.

(4) The registered agent of one or more limited liability companies may resign its agency appointment by delivering a certificate to the office of the Secretary of State for filing stating that it resigns as registered agent for the limited liability companies identified in the certificate, but the resignation shall not become effective until ninety (90) days after the certificate is filed by the Secretary of State. There shall be attached to such certificate an affidavit of the registered agent that at least thirty (30) days prior to the filing of the certificate notices were sent by certified or registered mail to each limited liability company for which such registered agent is resigning as registered agent of the resignation of such registered agent. This notice shall be delivered to the last known principal office of each limited liability company identified in the certificate. After receipt of the notice of resignation of its registered agent, the limited liability company for which such registered agent was acting shall obtain and designate a new registered agent. After the resignation of the registered agent has become effective, if the limited liability company fails to obtain and designate a new registered agent, service of legal process against the limited liability company for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with subsection (2) of 79-29-111.

SOURCES: Laws, 1994, ch. 402, § 6; Laws, 1997, ch. 418, § 28, eff from and after July 1, 1997.

Cross References — Certificates filed pursuant to this section must be delivered to the Secretary of State, see § 79-29-207.

Application of this section to foreign limited liability companies, see § 79-29-1002.

JUDICIAL DECISIONS

1. In general.

Agents appointed under Miss. Code Ann. § 79-29-106 are agents in fact, rather than statutory agents, because the

party appointing the agent can choose the identity of the agent. *Burton v. Cont'l Cas. Co.*, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 79299 (S.D. Miss. Oct. 30, 2006).

§ 79-29-107. Records to be kept.

(1) Each limited liability company shall keep at its principal place of business the following: (a) a current list of the full name and last known street address of each member and manager; (b) a copy of the certificate of formation and all certificates of amendment and restatement thereof, together with executed copies of any powers of attorney pursuant to which any certificate has been executed; (c) copies of any then effective limited liability company agreement; and (d) unless contained in the certificate of formation or the limited liability company agreement, a writing setting out: (i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute; (ii) the times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and (iii) any events upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

(2) The records specified under this section are subject to inspection and copying at the reasonable request, and at the expense, of any member or manager during ordinary business hours.

(3) The failure of the limited liability company to maintain the foregoing required records shall not, for this reason, cause any member to be liable for any debt, obligation or liability of the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 7, eff from and after July 1, 1994.

Cross References — Right of member to inspect and copy and company record required to be maintained by this section, see § 79-29-308.

Profit and loss to be allocated on basis of the value, as stated in the limited liability company records acquired to be kept pursuant to this section, see § 79-29-503.

Distributions must be made on the basis of the value, as stated in the limited liability company records required to be kept pursuant to this section, see § 79-29-504.

JUDICIAL DECISIONS

1. Attorney not negligent.

Summary judgment was proper against a claim that an attorney was negligent in failing to ensure that the parties forming a limited liability company under the provisions of the Mississippi Limited Liability Act completed a statement reflecting

the contributions of each of the parties, where the attorney presented an affidavit in support of his motion for summary judgment from an attorney who had extensive experience in the formation of such companies that it was not the responsibility of the attorney to complete

such form, and that the fault lay with the failure of the parties to complete the form after being advised to do so by the attorney, and the claimant did not rebut the attorney's affidavit. *McLeod v. Jackson*, 829 So. 2d 722 (Miss. Ct. App. 2002).

§ 79-29-108. Nature of business; powers.

(1) Subject to the provisions of its certificate of formation and subject to any other laws of this state which govern or limit the conduct of a particular business or activity, a limited liability company may carry on any lawful business, purpose or activity.

(2) Unless its certificate of formation provides otherwise, every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power:

- (a) To sue and be sued, complain and defend in its name;
- (b) To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real and personal property, and any legal or equitable interest in property, wherever located;
- (c) To sell, convey, option, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;
- (d) To purchase, receive, subscribe for, otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity;
- (e) To make contracts and guarantees, including guarantees of persons which, directly or indirectly, own, are owned by, or are under common ownership with the limited liability company, incur liabilities, borrow money, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
- (f) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust, limited liability company, foreign limited liability company or other entity;
- (h) To conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;
- (i) To have and select employees and agents, define their duties, fix their compensation and lend them money and credit;
- (j) To pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, and benefit or incentive plans for any or all of its and its subsidiaries' current or former managers, members, employees and agents;
- (k) To make donations for the public welfare or for charitable, scientific or educational purposes;
- (l) To transact any lawful business that will aid governmental policy; and
- (m) To do any other act, not inconsistent with law, that furthers its business and affairs.

SOURCES: Laws, 1994, ch. 402, § 8, eff from and after July 1, 1994.

Cross References — Applicability of this section to § 79-29-904, see § 79-29-904. Applicability of this section to §§ 79-29-905, see § 79-29-905.

JUDICIAL DECISIONS

1. In general.
2. Entity's power to secure obligations.

1. In general.

Limited liability company (LLC) operating agreement had no specific provision on raising additional equity. However, the fact that the operating agreement did not affirmatively provide for raising additional equity did not mean that doing so was prohibited, as under Miss. Code Ann. § 79-29-108(1), the LLC could lawfully raise additional equity; defendant's financial interest was properly reduced as a result of the other members' capital contributions in a valid call for the raising of additional equity, and summary judgment was improperly granted for defendant on that issue. *KBL Props., LLC v. Bellin*, 900 So. 2d 1160 (Miss. 2005).

2. Entity's power to secure obligations.

Judgment of the district court in a case

to determine ownership of cattle, granting summary judgment for the buyer of the cattle on the ground that the apparent seller was the owner and passed title to the buyer free of a lien, was reversed and remanded, because a fact issue existed on the ownership of the apparent seller; plaintiff bank's and defendant bank's security interests properly perfected on an individual and his property, attached to the cattle only if the apparent seller was a sole proprietorship of the individual, but if the apparent seller operated as a partnership or limited liability company, the individual did not have sufficient rights in the cattle to encumber them. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549 (5th Cir. 2007).

§ 79-29-109. Business transactions of member or manager with the limited liability company.

Except as provided in the certificate of formation or the limited liability company agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager.

SOURCES: Laws, 1994, ch. 402, § 9, eff from and after July 1, 1994.

§ 79-29-110. Indemnification.

(1) Except as provided in subsection (4) of this section, a limited liability company may indemnify and hold harmless any member, manager or other person made a party to a proceeding because he is or was a member, manager or agent of the limited liability company against liability incurred in the proceeding if:

- (a) He conducted himself in good faith; and
- (b) He reasonably believed:

(i) In the case of conduct in his official capacity with the limited liability company, that his conduct was in its best interests; and

(ii) In all other cases, that his conduct was at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, he had no reasonable cause to believe that his conduct was unlawful.

(2) A member's, manager's or other person's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of paragraph (1)(b)(ii) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the member, manager or person did not meet the standard of conduct described in this section.

(4) A limited liability company may not indemnify a member, manager or other person under this section:

(a) In connection with a proceeding by or in the right of the limited liability company in which the member, manager or other person was adjudged liable to the limited liability company; or

(b) In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the limited liability company is limited to reasonable expenses incurred in connection with the proceeding.

(6) Unless otherwise provided in its certificate of formation or limited liability company agreement, a limited liability company shall indemnify a member, manager or other person who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a member, manager or agent of the limited liability company against reasonable expenses incurred by him in connection with the proceeding.

(7)(a) A limited liability company may pay for or reimburse the reasonable expenses incurred by a member, manager or other person who is a party to a proceeding in advance of final disposition of the proceeding if:

(i) The member, manager or other person furnishes the limited liability company a written affirmation of his good faith belief that he has met the standard of conduct described in subsection (1) of this section;

(ii) The member, manager or other person furnishes the limited liability company a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(iii) A determination is made that the facts then known to those making the determination would not preclude indemnification under this section.

(b) The undertaking required by paragraph (7)(a)(ii) of this section must be an unlimited general obligation of the member, manager or other

person but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payment under this subsection shall be made in the manner specified in subsection (9) of this section.

(8) Unless a limited liability company's certificate of formation or limited liability company agreement provides otherwise, a member, manager or other person who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(a) The member, manager or other person is entitled to mandatory indemnification under subsection (6), in which case the court shall also order the limited liability company to pay the member, manager or other person's reasonable expenses incurred to obtain court-ordered indemnification; or

(b) The member, manager or other person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances whether or not he met the standard of conduct set forth in subsection (1) or was adjudged liable as described in subsection (4), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

(9)(a) A limited liability company may not indemnify a member, manager or other person under subsection (1) unless authorized in the specific case after a determination has been made that indemnification of the member, manager or other person is permissible in the circumstance because he has met the standard of conduct set forth in subsection (1).

(b) Unless otherwise provided in the certificate of formation or limited liability company agreement, the determination shall be made:

(i) If management of the limited liability company is vested in a manager or managers, by majority vote of a quorum of the managers consisting of persons not at the time parties to the proceeding;

(ii) If management of the limited liability company is not vested in a manager or managers, by majority vote of a quorum of members consisting of persons not at the time parties to the proceeding;

(iii) If a quorum cannot be obtained under paragraph (9)(b)(i) or (ii), by majority vote of a committee consisting of two (2) or more managers not at the time parties to the proceeding duly designated by the managers (in which designation managers who are parties may participate), or, if management is not vested in a manager or managers, by majority vote of a committee consisting of two (2) or more members not at the time parties to the proceeding duly designated by the members (in which designation members who are parties may participate); or

(iv) By special legal counsel:

(A) Selected by the manager or managers, or members if management is not vested in a manager or managers, or a committee selected in the manner prescribed in paragraph (9)(b)(iii); or

(B) If a quorum cannot be obtained under paragraph (9)(b)(i) or (ii) and a committee cannot be designated under paragraph (9)(b)(iii),

selected by a majority vote of all members (in which selection, members who are parties may participate).

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under paragraph (9)(b)(iv) to select counsel.

(10) A limited liability company may purchase and maintain insurance on behalf of a person who is or was a member, manager or agent of the limited liability company, or who, while a member, manager or agent of the limited liability company is or was serving at the request of the limited liability company as a manager, director, officer, partner, trustee, employee or agent of another foreign or domestic limited liability company, corporation, nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a manager, director, officer, employee or agent, whether or not the limited liability company would have power to indemnify him against the same liability under subsection (1) or (2) of this section.

(11)(a) Unless the certificate of formation or limited liability company agreement provides otherwise, any authorization of indemnification in the certificate of formation or limited liability company agreement shall not be deemed to prevent the limited liability company from providing the indemnity permitted or mandated by this section.

(b) Any limited liability company shall have the power to make any further indemnity, including advance of expenses, to and enter contracts of indemnity with any manager, member or other person that may be authorized by the certificate of formation or limited liability company agreement or any resolution adopted, before or after the event, by the members, except an indemnity against his gross negligence or willful misconduct. Unless the certificate of formation or limited liability company agreement or resolution provides otherwise, any determination as to any further indemnity shall be made in accordance with paragraph (9)(b)(ii) or (iii). Each such indemnity may continue as to a person who has ceased to have the capacity referred to above and may inure to the benefit of the heirs, executors and administrators of such person.

(c) This section does not limit a limited liability company's power to pay or reimburse expenses incurred by a member, manager or other person in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

SOURCES: Laws, 1994, ch. 402, § 10, eff from and after July 1, 1994.

RESEARCH REFERENCES

ALR. Causes of action governed by limitations period in UCC § 2-725. 49 A.L.R.5th 1.

§ 79-29-111. Service on limited liability company.

(1) A limited liability company's registered agent is the limited liability company's agent for service of process, notice or demand required or permitted by law to be served on the limited liability company.

(2) If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, service of legal process against the limited liability company shall be upon the Secretary of State in accordance with the Rules of Civil Procedure of this state. Service is perfected under this subsection at the earliest of:

- (a) The date the limited liability company receives the mail;
- (b) The date shown on the return receipt, if signed on behalf of the limited liability company; or
- (c) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed.

(3) This section does not prescribe the only means, or necessarily the required means, of serving a limited liability company.

SOURCES: Laws, 1994, ch. 402, § 11, eff from and after July 1, 1994.

Cross References — Service of legal process upon Secretary of State when limited liability company fail to designate a new registered agent after resignation of registered agent, see § 79-29-106.

§ 79-29-112. Taxation.

Domestic limited liability companies and foreign limited liability companies shall be classified as an entity for purposes of the income tax laws of this state in the same manner as they are classified for federal income tax purposes.

SOURCES: Laws, 1994, ch. 402, § 12, eff from and after July 1, 1994.

ARTICLE 2.

FORMATION, CERTIFICATE OF FORMATION.

SEC.

- 79-29-201. Certificate of Formation.
- 79-29-202. Amendment to certificate.
- 79-29-203. Restated certificates of formation.
- 79-29-204. Certificates of dissolution and cancellation.
- 79-29-205. Signing of certificates.
- 79-29-206. Amendment, dissolution or cancellation by judicial act.
- 79-29-207. Filing with the Secretary of State.

- 79-29-208. Notice.
- 79-29-209. Merger of limited liability company.
- 79-29-210. Action on a plan of merger.
- 79-29-211. Certificate of merger.
- 79-29-212. Effect of merger.
- 79-29-213. Abandonment of a merger.
- 79-29-214. Appraisal rights.

§ 79-29-201. Certificate of Formation.

(1) In order to form a limited liability company, a certificate of formation must be signed and delivered to the office of the Secretary of State. The certificate must set forth:

- (a) The name of the limited liability company;
- (b) The street and mailing address of the registered office and the name and the street and mailing address of the registered agent for service of process, required to be maintained by Section 79-29-106;
- (c) If the limited liability company is to have a specific date of dissolution, the latest date upon which the limited liability company is to dissolve;
- (d) If full or partial management of the limited liability company is vested in a manager or managers, a statement to that effect;
- (e) Any other matters the managers or members determine to include therein.

(2) A limited liability company is formed at the date and time of the filing of the certificate of formation by the Secretary of State, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, or at any later time specified in the certificate of formation if, in either case, the certificate of formation so filed substantially complies with the requirements of this chapter. A delayed effective date specified in a certificate of formation may not be later than the ninetieth day after the date and time it is filed by the Secretary of State.

(3) For all purposes, a copy of the certificate of formation duly certified by the Secretary of State is conclusive evidence of the formation of a limited liability company and prima facie evidence of its existence.

SOURCES: Laws, 1994, ch. 402, § 13; Laws, 1997, ch. 418, § 29, eff from and after July 1, 1997.

Cross References — Filing fees, see § 79-29-1203.

§ 79-29-202. Amendment to certificate.

(1) A certificate of formation is amended by delivering a certificate of amendment thereto to the office of the Secretary of State for filing. The certificate shall set forth:

- (a) The name of the limited liability company;
- (b) The future effective date of the amendment, which must be a date certain not later than the ninetieth day after the date it is filed by the

Secretary of State, unless it is effective upon the filing of the certificate of amendment; and

(c) The amendment to the certificate.

(2) A manager or, if there is no manager, any member who becomes aware that any statement in a certificate of formation was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(3) A certificate of formation may be amended at any time for any other proper purpose.

(4) Except for an amendment required by subsection (2) of this section, unless otherwise provided in the certificate of formation or limited liability company agreement, all members must agree to any amendment of the certificate of formation.

SOURCES: Laws, 1994, ch. 402, § 14; Laws, 1997, ch. 418, § 30; Laws, 2000, ch. 469, § 43, eff from and after July 1, 2000.

Cross References — “Amended and restated” and “restated” certificates of formation to be executed and filed and be effective in the same manner as are certificates of amendment pursuant to this section, see § 79-29-203.

Filing fees, see § 79-29-1203.

§ 79-29-203. Restated certificates of formation.

(1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative, and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(2) If the restated certificate of formation merely restates and integrates but does not further amend the certificate of formation then in effect and operative, it shall be specifically designated in its heading as a “restated certificate of formation” together with such other words as the limited liability company may deem appropriate. If the restated certificate restates and integrates and also further amends in any respect the certificate of formation then in effect and operative, it shall be specifically designated in its heading as an “amended and restated certificate of formation” together with such other words as the limited liability company may deem appropriate. Both “amended and restated” and “restated” certificates of formation shall be signed and delivered to the office of the Secretary of State for filing and shall be effective in the same manner as are certificates of amendment pursuant to Section 79-29-202.

(3) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

SOURCES: Laws, 1994, ch. 402, § 15; Laws, 1997, ch. 418, § 31, eff from and after July 1, 1997.

Cross References — Amendment of certificates of formation must be agreed to by all members, see § 79-29-202.

Filing fees, see § 79-29-1203.

§ 79-29-204. Certificates of dissolution and cancellation.

A certificate of dissolution must be delivered to the office of the Secretary of State for filing upon the dissolution and the commencement of winding up of the limited liability company pursuant to Article 8 of this chapter. A certificate of cancellation must be delivered to the office of the Secretary of State for filing upon completion of the winding up of the affairs of the limited liability company. Certificates of dissolution and cancellation must be delivered to the office of the Secretary of State for filing and must set forth:

- (a) The name of the limited liability company;
- (b) The reason for filing the certificate of dissolution or cancellation;
- (c) The future effective date of dissolution or cancellation, which must be a date certain not later than the ninetieth day after it is filed by the Secretary of State, unless it is effective upon the filing of the certificate; and
- (d) Any other information the person delivering the certificate for filing determines.

SOURCES: Laws, 1994, ch. 402, § 16; Laws, 1997, ch. 418, § 32, eff from and after July 1, 1997.

Cross References — Winding up of a limited liability company upon dissolution and until the filing of a certificate of cancellation as provided in this section, see § 79-29-803.

Deadline for filing claims against dissolved limited liability company, see § 79-29-806.

Filing fees, see § 79-29-1203.

§ 79-29-205. Signing of certificates.

(1) Unless otherwise specified in any other section of this chapter, any document required by this chapter to be delivered to the office of the Secretary of State for filing shall be signed:

- (a) By any manager, if management of the limited liability company is vested in one or more managers, or by a member if management of the limited liability company is reserved to the members;
- (b) If the limited liability company has not been formed, by any person forming the limited liability company; or
- (c) If the limited liability company is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(2) The person signing the document shall state beneath or opposite his signature his name, the capacity in which he signs and his street and mailing address. A document required or permitted to be delivered to the office of the

Secretary of State for filing under this chapter which contains a copy of a signature, however made, is acceptable for filing by the Secretary of State.

(3) Any person may sign a certificate, a limited liability company agreement or any amendment to either by an agent, including an attorney-in-fact.

(4) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the office of the Secretary of State for filing. An offense under this provision is a misdemeanor punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

SOURCES: Laws, 1994, ch. 402, § 17; Laws, 1995, ch. 362, § 10; Laws, 1997, ch. 418, § 33, eff from and after July 1, 1997.

Cross References — Application of this section to foreign limited liability companies, see § 79-29-1010.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 79-29-206. Amendment, dissolution or cancellation by judicial act.

If a person required by this Article 2 to sign a certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the chancery court of the county in which the principal office (or, if none in this state, the registered office) of the limited liability company is located to direct the signing of the certificate. If the court finds that it is proper for the certificate to be signed and that any person so designated has failed or refused to sign the certificate, it shall order appropriate relief, including an order to the Secretary of State to file an appropriate certificate.

SOURCES: Laws, 1994, ch. 402, § 18; Laws, 1997, ch. 418, § 34, eff from and after July 1, 1997.

§ 79-29-207. Filing with the Secretary of State.

(1) One (1) original of the certificate of formation and of any certificate of amendment, dissolution, cancellation or merger and any restated certificate or of any judicial decree of amendment, dissolution, cancellation or merger or restated certificate and any certificate filed by the Secretary of State pursuant to Section 79-29-106 must be delivered to the office of the Secretary of State. A person who signs a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing by the Secretary of State. Unless the Secretary of State finds that a certificate is not acceptable for filing, upon receipt of all filing fees required by Section 79-29-1203 he shall:

(a) Endorse on the original the word "Filed" and the day, month and year of the filing thereof;

(b) File the original in his office; and

(c) Return a copy to the person who delivered it for filing or his representative.

(2) Upon the filing of a certificate of amendment or judicial decree of amendment or an amended and restated certificate by the Secretary of State or upon the future effective date of a certificate of amendment or judicial decree thereof or an amended and restated certificate, as provided for therein, the certificate of formation shall be amended as set forth therein. Upon the filing of a certificate of dissolution or cancellation or a judicial decree thereof by the Secretary of State or upon the future effective date of a certificate of dissolution or cancellation or a judicial decree thereof, the certificate of formation is dissolved or canceled, as the case may be.

(3) Each certificate delivered to the office of the Secretary of State for filing must be typewritten or printed, or, if electronically transmitted, it must be in a format that can be retrieved or reproduced by the Secretary of State in typewritten or printed form, and must be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals.

SOURCES: Laws, 1994, ch. 402, § 19; Laws, 1995, ch. 362, § 11; Laws, 1997, ch. 418, § 35, eff from and after July 1, 1997.

§ 79-29-208. Notice.

The fact that a certificate of formation is on file in the office of the Secretary of State is notice that the entity formed in connection with the filing of the certificate is a limited liability company formed under the laws of this state.

SOURCES: Laws, 1994, ch. 402, § 20, eff from and after July 1, 1994.

§ 79-29-209. Merger of limited liability company.

(1) Unless otherwise provided in the certificate of formation or limited liability company agreement, one or more domestic limited liability companies may merge with a domestic or foreign entity pursuant to a plan of merger.

(2) A domestic or foreign entity may be a party to the merger, or may be created by the terms of the plan of merger, only if:

(a) The merger is permitted by the laws under which the entity is organized or by which it is governed; and

(b) In effecting the merger, the entity complies with such laws and with its organizational documents.

(3) The plan of merger must include:

(a) The name of each entity that will merge and the name of the entity that will be the survivor of the merger;

(b) The terms and conditions of the merger;

(c) The manner and basis of converting the interests of each merging entity into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(d) The organizational documents of any entity to be created by the merger, or if a new entity is not to be created by the merger, any amendments to the survivor's organizational documents; and

(e) Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the organizational documents of any such party.

(4) The terms described in subsections (3)(b) and (3)(c) of this section may be made dependent on facts ascertainable outside the plan of merger, provided that those facts are objectively ascertainable. The term "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the limited liability company.

(5) The plan of merger may also include a provision that the plan may be amended prior to filing the certificate of merger with the Secretary of State, provided that if the members of a domestic limited liability company that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such members the plan may not be amended to:

(a) Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the owners of interests in any party to the merger upon conversion of their interests under the plan;

(b) Change the organizational documents of any other entity that will survive or be created as a result of the merger; or

(c) Change any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

SOURCES: Laws, 1994, ch. 402, § 21; Laws, 1997, ch. 418, § 36; Laws, 2000, ch. 469, § 44, eff from and after July 1, 2000.

§ 79-29-210. Action on a plan of merger.

In the case of a limited liability company that is a party to a merger:

(a) Unless otherwise provided in the certificate of formation or limited liability company agreement, the plan of merger must be adopted by the members.

(b) Unless the plan of merger is not required to be approved by the members, the limited liability company must notify each member and each owner of a limited liability company interest, whether or not entitled to vote, of the meeting of members at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the limited liability company is to be merged into an existing entity, the notice shall also include or be accompanied by a copy or summary of the organizational documents of that entity. If the limited liability company is to be merged into an entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the organizational documents of the new entity.

(c) Unless otherwise provided in the certificate of formation or limited liability company agreement, approval of the plan of merger requires the approval of at least a majority of the votes entitled to be cast on the plan, and, if any class or series of interests is entitled to vote as a separate group on the plan of merger, the approval of at least a majority of the votes entitled to be cast on the merger by that voting group.

(d) Unless otherwise provided in the certificate of formation or limited liability company agreement, separate voting by voting groups is required:

(i) On a plan of merger, by each class or series of interests that (A) are to be converted, pursuant to the provisions of the plan of merger, into shares or other securities, interests, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing, or (B) would have a right to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the certificate of formation or limited liability company agreement, would require action by separate voting groups under the certificate of formation or limited liability company agreement;

(ii) On a plan of merger, if the voting group is entitled under the certificate of formation or limited liability company agreement, to vote as a voting group to approve a plan of merger.

(e) If as a result of a merger one or more members or owners of a limited liability company interest of a domestic limited liability company would become subject to personal liability for the obligations or liabilities of any entity, approval of the plan of merger shall require the execution, by each such member and owner of a limited liability company interest, of a separate written consent to become subject to such personal liability.

SOURCES: Laws, 2000, ch. 469, § 45, eff from and after July 1, 2000.

Cross References — Action on plan of merger under Business Corporation Act, see § 79-4-11.04.

§ 79-29-211. Certificate of merger.

After a plan of merger has been adopted and approved as required by the Mississippi Limited Liability Company Act, a certificate of merger shall be executed on behalf of each party to the merger by any manager, if management of the limited liability company is vested in one or more managers, or by a member if management of the limited liability company is reserved to the members. The certificate shall set forth:

(a) The names of the parties to the merger and the date on which the merger occurred or is to be effective;

(b) If the organizational documents of the survivor of a merger are amended, or if a new entity is created as a result of a merger, the amendments to the organizational documents of the survivor or the organizational documents of the new entity;

(c) A statement that the plan was duly approved by the members and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Mississippi Limited Liability Company Act and the certificate of formation and limited liability company agreement;

(d) As to each entity that was a party to the merger, a statement that the plan and the performance of its terms were duly authorized by all action required by the laws under which the entity is organized, or by which it is governed, and by its organizational documents;

(e) The future effective date of the merger, which shall be a date or time certain not later than the ninetieth day after the date it is filed, if it is not to be effective upon the filing of the certificate of merger; and

(f) The plan of merger.

SOURCES: Laws, 2000, ch. 469, § 46, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error. The reference to “Mississippi Limited Liability Corporation Act” in the first paragraph and in (c) was changed to “Mississippi Limited Liability Company Act”. The Joint Committee ratified the correction at its June 3, 2003, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Cross References — Articles of merger or share exchange under Business Corporation Act, see § 79-4-11.06.

§ 79-29-212. Effect of merger.

(1) When a merger becomes effective:

(a) The entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

(b) The separate existence of every entity that is merged into the survivor ceases;

(c) All property owned by, and every contract right possessed by, each entity that merges into the survivor is vested in the survivor without reversion or impairment;

(d) All liabilities of each entity that is merged into the survivor are vested in the survivor;

(e) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(f) The organizational documents of the survivor are amended to the extent provided in the plan of merger;

(g) The organizational documents of a survivor that is created by the merger become effective; and

(h) The interests in an entity that is a party to a merger that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash, other property, or any combination of the foregoing, are converted, and the former holders of such interests

are entitled only to the rights provided to them in the plan of merger or to any rights they may have under Section 79-29-214.

(2) Any member or owner of a limited liability company interest of a domestic limited liability company that is a party to a merger who, prior to the merger, was liable for the liabilities or obligations of such limited liability company, shall not be released from such liabilities or obligations by reason of the merger.

(3) Upon a merger becoming effective, a foreign entity that is the survivor of the merger is deemed to:

(a) Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of the members and owners of a limited liability company interest of each domestic limited liability company that is a party to the merger who exercise appraisal rights; and

(b) Agree that it will promptly pay the amount, if any, to which such members and owners of a limited liability company interest are entitled under Section 79-29-214, Mississippi Code of 1972.

SOURCES: Laws, 2000, ch. 469, § 47, eff from and after July 1, 2000.

Cross References — Effect of merger or share exchange under Business Corporation Act, see § 79-4-11.07.

§ 79-29-213. Abandonment of a merger.

(1) Unless otherwise provided in a plan of merger or in the laws under which a domestic or foreign entity that is a party to a merger is organized or by which it is governed, after the plan has been adopted and approved as required by the Mississippi Limited Liability Company Act, and at any time before the merger has become effective, it may be abandoned by any party thereto without action by the party's owners of interests, in accordance with any procedures set forth in the plan of merger or, if no such procedures are set forth in the plan, in the manner determined by the entity, subject to any contractual rights of other parties to the merger.

(2) If a merger is abandoned under subsection (1) after a certificate of merger has been filed with the Secretary of State but before the merger has become effective, a statement that the merger has been abandoned in accordance with this subsection, executed on behalf of a party to the merger by any manager, if management of the limited liability company is vested in one or more managers, or by a member if management of the limited liability company is reserved to the members, shall be delivered to the Secretary of State for filing prior to the effective date of the merger. Upon filing, the statement shall take effect and the merger shall be deemed abandoned and shall not become effective.

SOURCES: Laws, 2000, ch. 469, § 48, eff from and after July 1, 2000.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation cor-

rected a typographical error. The reference to “Mississippi Limited Liability Corporation Act” in (1), was changed to “Mississippi Limited Liability Company Act”. The Joint Committee ratified the correction at its June 3, 2003, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Cross References — Abandonment of merger or share exchange under Business Corporation Act, see § 79-4-11.08.

§ 79-29-214. Appraisal rights.

(1) **Definitions** — In this section:

(a) “Beneficial holder” means a person who is the beneficial owner of interests held in a voting trust or by a nominee on the beneficial owner’s behalf.

(b) “Fair value” means the value of the limited liability company’s interests determined:

(i) Immediately before the effectuation of the action to which the member or owner of a limited liability company interest objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status.

(c) “Record holder” means the person in whose name interests are registered in the records of the entity or the beneficial owner of interests to the extent of the rights granted by a nominee certificate on file with the entity.

(d) “Holder” means both a record holder and a beneficial holder.

(2) **Right to appraisal** — (a) Unless otherwise provided in the certificate of formation or limited liability company agreement, each member and owner of a limited liability company interest is entitled to appraisal rights, and to obtain payment of the fair value of that member or owner of a limited liability company’s interest, in the event of any of the following actions:

(i) Consummation of a merger to which the limited liability company is a party;

(ii) Consummation of a sale, lease, exchange, or other disposition of assets if the disposition would leave the limited liability company without a significant continuing business activity. If a limited liability company retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations or revenues from continuing operations for that fiscal year, in each case of the limited liability company and its subsidiaries on a consolidated basis, the limited liability company will conclusively be deemed to have retained a significant continuing business activity;

(iii) Any other action to the extent provided by the certificate of formation or limited liability company agreement.

(b) A member or owner of a limited liability company interest entitled to appraisal rights under this section may not challenge a completed action for which appraisal rights are available unless such action:

(i) Was not effectuated in accordance with the applicable provisions of the Mississippi Limited Liability Company Act or the limited liability company's certificate of formation or limited liability company agreement; or

(ii) Was procured as a result of fraud or material misrepresentation.

(3) **Notice of appraisal rights** — If a proposed action described in subsection (2) of this section is to be submitted to a vote, the meeting notice must state that the limited liability company has concluded that members and owners of limited liability company interests are entitled to assert appraisal rights under this section and a copy of this section must accompany the meeting notice sent to the members and owners of limited liability company interests.

(4) **Notice of intent to demand payment** — (a) If a proposed action requiring appraisal rights under subsection (2)(a) of this section is submitted to a vote, members and owners of limited liability company interests who wish to assert appraisal rights with respect to any class or series of interests:

(i) Must deliver to the limited liability company before the vote is taken written notice of the person's intent to demand payment if the proposed action is effectuated; and

(ii) Must not vote, or cause or permit to be voted, any of the person's interests in favor of the proposed action.

(b) A member or owner of a limited liability company interest who does not satisfy the requirements of subsection (4)(a) of this section is not entitled to payment under this section.

(5) **Appraisal notice and form** — (a) If a proposed action requiring appraisal rights under subsection (2) of this section becomes effective, the limited liability company must deliver a written appraisal notice and form required by this subsection (5) to all members and owners of limited liability company interests who satisfied the requirements of subsection (4) of this section.

(b) The appraisal notice must be sent no earlier than the date the action became effective and no later than ten (10) days after such date and must:

(i) Supply a form that specifies the date of the first announcement to members and owners of limited liability company interests of the principal terms of the proposed action and requires the person asserting appraisal rights to certify (A) whether beneficial ownership of those interests for which appraisal rights are asserted was acquired before that date, and (B) that the person did not vote for the transaction;

(ii) State:

(A) Where the form must be sent and where certificates for certificated interests must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (5)(b)(ii)(B) of this section;

(B) A date by which the limited liability company must receive the form which date may not be fewer than forty (40) nor more than sixty (60) days after the date the subsection (5)(a) appraisal notice and form

are sent, and state that the person shall have waived the right to demand appraisal with respect to the interests unless the form is received by the limited liability company by such specified date;

(C) The limited liability company's estimate of the fair value of the interests;

(D) That, if requested in writing, the limited liability company will provide to the person so requesting, within ten (10) days after the date specified in subsection (5)(b)(ii)(B), the number of persons who return the forms by the specified date and the aggregate interests owned by them; and

(E) The date by which the notice to withdraw under subsection (6) must be received, which date must be within twenty (20) days after the date specified in subsection (5)(b)(ii)(B) of this section; and

(c) Be accompanied by a copy of this section.

(6) Perfection of rights; right to withdraw — (a) A person who receives notice pursuant to subsection (5) and who wishes to exercise appraisal rights must certify on the form sent by the limited liability company whether the beneficial owner of such interests acquired beneficial ownership thereof before the date required to be set forth in the notice pursuant to subsection (5) (b) of this section. If a person fails to make this certification, the limited liability company may elect to treat the person's interests as after-acquired interests under subsection (8). In addition, a person who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated interests, deposit the person's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to subsection (5)(b) (ii) (B) of this section. Once a person deposits that person's certificates or, in the case of uncertificated interests, returns the executed forms, that member or owner of a limited liability company interest loses all rights as a member or owner of a limited liability company interest, unless the person withdraws pursuant to subsection (6)(b) of this section.

(b) A person who has complied with subsection (6)(a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to subsection (5)(b)(ii)(E) of this section. A person who fails to so withdraw from the appraisal process may not thereafter withdraw without the limited liability company's written consent.

(c) A person who does not execute and return the form and, in the case of certificated interests, deposit that person's certificates where required, each by the date set forth in the notice described in subsection (5)(b)(ii)(B) of this section, shall not be entitled to payment under this subsection.

(7) Payment — (a) Except as provided in subsection (6), within thirty (30) days after the form required by subsection (5)(b)(ii)(B) of this section is due, the limited liability company shall pay in cash to those persons who complied with subsection (6)(a) of this section the amount the limited liability company estimates to be the fair value of their interests, plus interest at the legal rate.

(b) The payment to each person pursuant to subsection (7)(a) of this section must be accompanied by:

(i) Financial statements of the limited liability company that issued the interests to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in equity for that year, and the latest available interim financial statements, if any;

(ii) A statement of the limited liability company's estimate of the fair value of the interests, which estimate must equal or exceed the limited liability company's estimate given pursuant to subsection (5)(b)(ii)(C) of this section;

(iii) A statement that persons described in this subsection (7) have the right to demand further payment under subsection (9) and that if any such person does not do so within the time period specified therein, such person shall be deemed to have accepted such payment in full satisfaction of the limited liability company's obligations under this section.

(8) **After-acquired interests** — (a) A limited liability company may elect to withhold payment required by subsection (7) of this section from any person who did not certify that beneficial ownership of all of the person's interests for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to subsection (5)(b)(i) of this section.

(b) If the limited liability company elected to withhold payment under subsection (8)(a) of this section, it must, within thirty (30) days after the form required by subsection (5)(b)(ii)(B) of this section is due, notify all persons who are described in subsection (8)(a) of this section:

(i) Of the information required by subsection (7)(b)(i) of this section;

(ii) Of the limited liability company's estimate of fair value pursuant to subsection (7)(b)(ii) of this section;

(iii) That they may accept the limited liability company's estimate of fair value, plus interest at the legal rate, in full satisfaction of their demands or demand appraisal under subsection (9) of this section;

(iv) That those persons who wish to accept such offer must so notify the limited liability company of their acceptance of the limited liability company's offer within thirty (30) days after receiving the offer; and

(v) That those persons who do not satisfy the requirements for demanding appraisal under subsection (9) of this section shall be deemed to have accepted the limited liability company's offer.

(c) Within ten (10) days after receiving the person's acceptance pursuant to subsection (8)(b) of this section, the limited liability company must pay in cash the amount it offered under subsection (8)(b)(ii) of this section to each person who agreed to accept the limited liability company's offer in full satisfaction of the person's demand.

(d) Within forty (40) days after sending the notice described in subsection (8)(b) of this section, the limited liability company must pay in cash the amount it offered to pay under subsection (7)(b) of this section to each person described in subsection (8) (b) (ii) of this section.

(9) **Procedure if person dissatisfied with payment or offer** — (a) A person paid pursuant to subsection (7) of this section who is dissatisfied with the amount of the payment must notify the limited liability company in writing of that person's estimate of the fair value of the interests and demand payment of that estimate plus interest at the legal rate less any payment under subsection (7) of this section. A person offered payment under subsection (8) who is dissatisfied with that offer must reject the offer and demand payment of the person's stated estimate of the fair value of the shares plus interest at the legal rate.

(b) A person who fails to notify the limited liability company in writing of that person's demand to be paid the person's stated estimate of the fair value plus interest at the legal rate under subsection (9)(a) of this section within thirty (30) days after receiving the limited liability company's payment or offer of payment under subsection (7) or (8) of this section, respectively, waives the right to demand payment under this subsection (9) and shall be entitled only to the payment made or offered pursuant to those respective subsections.

(10) **Court action** — (a) If a person makes demand for payment under subsection (9) of this section which remains unsettled, the limited liability company shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the interests and accrued interest at the legal rate. If the limited liability company does not commence the proceeding within the sixty (60) day period, it shall pay in cash to each such person the amount the person demanded pursuant to subsection (9)(a) of this section plus interest at the legal rate.

(b) The limited liability company shall commence the proceeding in the chancery court of the county where the limited liability company's registered office is located. If the limited liability company is a foreign limited liability company without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic limited liability company merged with the foreign limited liability company was located at the time of the transaction.

(c) The limited liability company shall make all persons whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their interests, and all parties must be served with a copy of the complaint. Nonresidents may be served as otherwise provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (10)(b) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to it. The persons demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(e) Each person made a party to the proceeding is entitled to judgment:

(i) for the amount, if any, by which the court finds the fair value of the

person's interests, plus interest at the legal rate, exceeds the amount paid by the limited liability company to the person for such interests, or (ii) for the fair value, plus interest at the legal rate, of the person's interests for which the limited liability company elected to withhold payment under subsection (8) of this section.

(11) **Court costs and counsel fees** — (a) The court in an appraisal proceeding commenced under subsection (10) of this section shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the persons demanding appraisal, in amounts the court finds equitable, to the extent the court finds such persons acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(b) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(i) Against the limited liability company and in favor of any or all persons demanding appraisal if the court finds the limited liability company did not substantially comply with the requirements of subsection (3), (5), (7) or (8) of this section; or

(ii) Against either the limited liability company or a person demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this subsection.

(c) If the court in an appraisal proceeding finds that the services of counsel for any member or owner of a limited liability company interest were of substantial benefit to other persons similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the persons who were benefited.

(d) To the extent the limited liability company fails to make a required payment pursuant to subsection (7), (8) or (9) of this section, the person may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including counsel fees.

SOURCES: Laws, 2000, ch. 469, § 49, eff from and after July 1, 2000.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the section was corrected by substituting "subsection (3), (5), (7) or (8) of this section" for "subsections (3), (5), (7) or (8) of this section" in (11)(b)(i) and (d).

Cross References — Appraisal rights under Business Corporation Act, see §§ 79-4-13.01 et seq.

Notice of appraisal rights under Business Corporation Act, see §§ 79-4-13.20 et seq.

ARTICLE 3.

MEMBERS.

SEC.

- 79-29-301. Admission of members.
- 79-29-302. Management of limited liability company.
- 79-29-303. Agency power of members and managers.
- 79-29-304. Classes and voting.
- 79-29-305. Liability to third parties.
- 79-29-306. Limited liability company agreement.
- 79-29-307. Events of dissociation.
- 79-29-308. Information.

§ 79-29-301. Admission of members.

(1) A person becomes a member on the later of:

(a) The date the original certificate of formation is filed by the Secretary of State; or

(b) The date stated in the records of the limited liability company as the date that person becomes a member.

(2) After the filing by the Secretary of State of a limited liability company's original certificate of formation, a person may be admitted as a member:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, upon the compliance with the certificate of formation or the limited liability company agreement or, if the certificate of formation or the limited liability company agreement does not so provide, upon the written consent of all members; and

(b) In the case of an assignee of a limited liability company interest, upon compliance with subsection (1) of Section 79-29-704.

SOURCES: Laws, 1994, ch. 402, § 22; Laws, 1997, ch. 418, § 37, eff from and after July 1, 1997.

Cross References — “Member” as meaning a person that has been admitted to a limited liability company as provided in this section see § 79-29-103.

§ 79-29-302. Management of limited liability company.

Except to the extent that the certificate of formation provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members. The certificate of formation or limited liability company agreement may impose limitations on the powers and authorities of the manager or managers of the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 23, eff from and after July 1, 1994.

§ 79-29-303. Agency power of members and managers.

(1) Except as provided in subsection (2) of this section, every member is an agent of the limited liability company for the purpose of conducting its business and affairs, and the act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the member has no such authority.

(2) If the certificate of formation provides that management of the limited liability company is vested in a manager or managers:

(a) No member, acting solely in the capacity as a member, is an agent of the limited liability company; and

(b) Every manager is an agent of the limited liability company for the purpose of its business and affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is the manager, binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member which is not apparently for the carrying on in the usual way the business of the limited liability company does not bind the limited liability company unless authorized in accordance with the limited liability company agreement.

(4) No act of a manager or member in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction.

SOURCES: Laws, 1994, ch. 402, § 24, eff from and after July 1, 1994.

JUDICIAL DECISIONS

Where a minority member of a limited liability company (LLC), without the consent of the majority member, transferred LLC property to a company of which the member was the sole owner, the transfer, and subsequent pledge of the property to a creditor, were null and void because the

member lacked the authority under the LLC's operating agreement and Miss. Code Ann. § 79-29-303. *Kinwood Capital Group, LLC v. Northlake Dev., LLC* (In re Northlake Dev., LLC), — Bankr. —, 2007 Bankr. LEXIS 4403 (Bankr. S.D. Miss. Dec. 13, 2007).

§ 79-29-304. Classes and voting.

(1) Unless otherwise provided in the certificate of formation or limited liability company agreement, each member of a limited liability company shall

be entitled to one (1) vote on any matter entitled to be voted on by the members.

(2) Unless otherwise provided in this chapter, in the certificate of formation or the limited liability company agreement, any action required or permitted to be taken by the members of a limited liability company may be taken upon a majority vote of all of the members.

(3) A certificate of formation or limited liability company agreement may provide for classes or groups of members having such relative rights, powers and duties as may be provided therein, and may make provision for the future creation in the manner provided therein of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members.

(4) The certificate of formation or limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote (on a per capita or any other basis) separately or with all or any class or group of the members, on any matter.

(5) A certificate of formation or limited liability company agreement may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

SOURCES: Laws, 1994, ch. 402, § 25, eff from and after July 1, 1994.

§ 79-29-305. Liability to third parties.

(1) A person who is a member of a limited liability company is not liable, by reason of being a member, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company.

(2) A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, by reason of being a member of the limited liability company, except:

(a) Where the object of the proceeding is to enforce a member's right against or liability to the limited liability company; or

(b) In a derivative action brought pursuant to Article 11 of this chapter.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations and liabilities of the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 26; Laws, 1996, ch. 336, § 1, eff from and after July 1, 1996.

§ 79-29-306. Limited liability company agreement.

(1) The members of a limited liability company may enter into a limited liability company agreement to regulate or establish the affairs of the limited liability company, the conduct of its business and the relations of its members. A limited liability company agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with the laws of this state or the certificate of formation.

(2)(a) A limited liability company agreement must initially be agreed to by all of the members.

(b) If the certificate of formation or limited liability company agreement does not provide for the method by which a limited liability company agreement may be amended, then all of the members must agree to any amendment of a limited liability company agreement, including an amendment that occurs as the result of a merger with a domestic or foreign limited liability company.

(3)(a) A court of equity may enforce a limited liability company agreement by injunction or by such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

(b) As an alternative to injunctive or other equitable relief, when the provisions of Section 79-29-802 are applicable, the court may order dissolution of the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 27, eff from and after July 1, 1994.

§ 79-29-307. Events of dissociation.

[For all domestic limited liability companies formed on or before June 30, 1998, and which do not duly elect to come under the second tier of this section, this section shall read as follows:]

(1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(b) The member ceases to be a member of the limited liability company as provided in Section 79-29-702;

(c) The member is removed as a member in accordance with the certificate of formation or limited liability company agreement;

(d) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, the member (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a

petition filed against him in any proceeding of the nature described in this paragraph (1)(d); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties.

(e) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, if one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated;

(f) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member who is an individual:

(i) His death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(g) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(h) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member that is a partnership, limited partnership or limited liability company, the dissolution and commencement of winding up thereof;

(i) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of one hundred eighty (180) days after notice to the corporation of revocation without a reinstatement of its charter; or

(j) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(2) The certificate of formation or limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(3) Unless the certificate of formation or limited liability company agreement provides in writing that a member has no power to withdraw by

voluntary act from a limited liability company, the member may do so at any time by giving thirty (30) days' written notice to the other members, or such other notice as is provided for in the certificate of formation or limited liability company agreement. If the member has the power to withdraw but the withdrawal is a breach of the certificate of formation or limited liability company agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the certificate of formation or limited liability company agreement, and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in the certificate of formation or limited liability company agreement or otherwise available under applicable law. Unless otherwise provided in the certificate of formation or limited liability company agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term is a breach of the certificate of formation or limited liability company agreement.

[For all domestic limited liability companies formed on or after July 1, 1998, or for those previously formed such companies which elect to come under the following provisions by filing with the Secretary of State a certificate of amendment specifically stating that the limited liability company is electing to be subject to the following provisions, this section shall read as follows:]

(1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member withdraws by voluntary act from the limited liability company in accordance with the limited liability company agreement;

(b) The member ceases to be a member of the limited liability company as provided in Section 79-29-702;

(c) The member is removed as a member in accordance with the certificate of formation or limited liability company agreement;

(d) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, the member (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of the nature described in this paragraph (1)(d); or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties;

(e) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the

time, if one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated;

(f) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member who is an individual:

(i) His death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(g) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(h) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member that is a partnership, limited partnership or limited liability company, the dissolution and commencement of winding up thereof;

(i) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of one hundred eighty (180) days after notice to the corporation of revocation without a reinstatement of its charter; or

(j) Subject to contrary provision in the certificate of formation or limited liability company agreement, or consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(2) The certificate of formation or limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(3) Unless the certificate of formation or limited liability company agreement provides that a member has the power to do so, a member has no power to withdraw from a limited liability company.

SOURCES: Laws, 1994, ch. 402, § 28; Laws, 1998, ch. 376, § 5, eff from and after July 1, 1998.

Cross References — "Event of dissociation" as meaning an event that causes a person to cease to be a member as provided in this section, see § 79-29-103.

Dissolution of a limited liability company upon an event of dissociation of a member as provided in this section, see § 79-29-801.

§ 79-29-308. Information.

(1) Each member has the right to:

(a) Inspect and copy any of the limited liability company records required to be maintained by Section 79-29-107; and

(b) Subject to such reasonable standards as may be set forth in writing in the certificate of formation or limited liability company agreement, obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member in the limited liability company: (i) true and full information regarding the state of the business and financial condition of the limited liability company; (ii) promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited liability company as is just and reasonable.

(2) In addition to any other remedies, a court of competent jurisdiction may enforce the duty of making available the information and financial statements required by this section.

(3) In any action under this section, if the court finds that the limited liability company has failed to comply with the requirements of this section, the court may award an amount sufficient to reimburse the members bringing the action for the reasonable expenses incurred by the members, including attorneys' fees, in connection with the action or proceeding.

(4) Any waiver by a member of the rights provided in this section shall be unenforceable.

SOURCES: Laws, 1994, ch. 402, § 29, eff from and after July 1, 1994.

ARTICLE 4.

MANAGEMENT.

SEC.

79-29-401. Management of a limited liability company by a manager or managers.

79-29-402. General standards of conduct for a manager.

79-29-403. Limitation of liability of members and managers.

§ 79-29-401. Management of a limited liability company by a manager or managers.

(1) The certificate of formation of a limited liability company may delegate responsibility for managing a limited liability company to or among one or more managers to the extent provided therein or in the limited liability company agreement.

(2) Managers need not be residents of this state or members of the limited liability company unless the certificate of formation or the limited liability

company agreement so requires. The certificate of formation or the limited liability company agreement may prescribe other qualifications for managers.

(3) The number of managers shall be fixed by or in the manner provided in the certificate of formation or the limited liability company agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the certificate of formation or the limited liability company agreement.

(4) Unless otherwise provided in the certificate of formation or limited liability company agreement, managers shall be elected by the members.

(5) Unless otherwise provided in the certificate of formation or the limited liability company agreement, any vacancy occurring in the office of manager shall be filled by the vote of the members.

(6) All managers or any lesser number may be removed in the manner provided in the certificate of formation or the limited liability company agreement. If the certificate of formation or the limited liability company agreement does not provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by the vote of the members.

(7) Unless otherwise provided in the certificate of formation or the limited liability company agreement, any action required or permitted to be taken by the managers of a limited liability company may be taken upon a majority vote of the managers.

SOURCES: Laws, 1994, ch. 402, § 30, eff from and after July 1, 1994.

§ 79-29-402. General standards of conduct for a manager.

(1) A manager shall discharge his duties as a manager:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he reasonably believes to be in the best interests of the limited liability company.

(2) In discharging his duties, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more managers or employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence; or

(c) A committee of the managers of which he is not a member if the manager reasonably believes the committee merits confidence.

(3) A manager is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A manager is not liable for any action taken as a manager, or any failure to take any action, if he performed the duties of his office in compliance with this section.

SOURCES: Laws, 1994, ch. 402, § 31, eff from and after July 1, 1994.

§ 79-29-403. Limitation of liability of members and managers.

The certificate of formation or limited liability company agreement may contain a provision eliminating or limiting the liability of a manager or a member to the limited liability company or its members for money damages for any action taken, or any failure to take any action, as a manager or member, except liability for:

- (a) The amount of a financial benefit received by a member or manager to which he is not entitled;
- (b) An intentional infliction of harm on the limited liability company or the members;
- (c) An intentional violation of criminal law; or
- (d) A violation of Section 79-29-606.

SOURCES: Laws, 1994, ch. 402, § 32, eff from and after July 1, 1994.

ARTICLE 5.

FINANCE.

SEC.

- 79-29-501. Form of contribution.
- 79-29-502. Liability for contributions.
- 79-29-503. Sharing of profits and losses.
- 79-29-504. Sharing of distributions.

§ 79-29-501. Form of contribution.

The contribution of a member may be in cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

SOURCES: Laws, 1994, ch. 402, § 33, eff from and after July 1, 1994.

Cross References — Assignor of a limited liability company interest not released from liability to the company under this article, see § 79-29-704.

§ 79-29-502. Liability for contributions.

(1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) Except as provided in the certificate of formation or limited liability company agreement, a member is obligated to the limited liability company to perform an enforceable promise to contribute cash or property or to perform

services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(3) Unless otherwise provided in the certificate of formation or limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by specific consent of all the members. However, a creditor of a limited liability company who extends credit, or otherwise acts in reliance on that obligation after the member signs a writing that reflects the obligation and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation to the same extent as the limited liability company could pursuant to this section.

(4) A certificate of formation or limited liability company agreement may provide that the interest of any member who fails to make any contribution that he is obligated to make, shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing the defaulting member's proportionate interest in the limited liability company, subordinating his limited liability company interest to that of nondefaulting members, forcing a sale of his limited liability company interest, forfeiting his limited liability company interest, the lending by other members of the amount necessary to meet his commitment, fixing the value of his limited liability company interest by appraisal or by formula and redeeming or selling of his limited liability company interest at such value, or other penalty or consequence.

SOURCES: Laws, 1994, ch. 402, § 34, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 79-29-502(1) and Miss. Code Ann. § 79-14-502(a) are similar and both statutes deal with the statute of frauds. However, that was not the issue on appeal, where a minority member never promised to contribute to the limited liability company (LLC) in writing or

otherwise; the subject of the dispute, a capital call, was not an obligation but a choice, and the minority member's financial interest was properly reduced as a result of the other members' capital contributions in a valid call for the raising of additional equity. *KBL Props., LLC v. Bellin*, 900 So. 2d 1160 (Miss. 2005).

§ 79-29-503. Sharing of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in the certificate of formation or limited liability company agreement. If the certificate of formation or limited liability company agreement does not so provide, profits and losses must be allocated on the basis of the value, as stated in the limited liability company records required to be kept pursuant to Section

79-29-107, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

SOURCES: Laws, 1994, ch. 402, § 35, eff from and after July 1, 1994.

§ 79-29-504. Sharing of distributions.

Distributions of cash or other assets of a limited liability company must be allocated among the members, and among classes of members, in the manner provided in the certificate of formation or limited liability company agreement. If the certificate of formation or limited liability company agreement does not so provide distributions must be made on the basis of the value, as stated in the limited liability company records required to be kept pursuant to Section 79-29-107, of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

SOURCES: Laws, 1994, ch. 402, § 36, eff from and after July 1, 1994.

ARTICLE 6.

DISTRIBUTIONS.

SEC.

- | | |
|------------|--------------------------------------|
| 79-29-601. | Interim distributions. |
| 79-29-602. | Distribution upon dissociation. |
| 79-29-603. | Distribution in kind. |
| 79-29-604. | Right to distribution. |
| 79-29-605. | Limitations on distribution. |
| 79-29-606. | Liability for wrongful distribution. |

§ 79-29-601. Interim distributions.

Except as provided in this article, a member is entitled to receive distributions from a limited liability company before his dissociation from the limited liability company and before the dissolution and winding up thereof, to the extent and at the times or upon the occurrence of the events specified in the certificate of formation or limited liability company agreement.

SOURCES: Laws, 1994, ch. 402, § 37, eff from and after July 1, 1994.

Cross References — Assignor of a limited liability company interest not released from liability to the company under this article, see § 79-29-704.

Order of distribution of assets of limited liability company, see § 79-29-805.

§ 79-29-602. Distribution upon dissociation.

Except as provided in this chapter, upon dissociation any dissociating member is entitled to receive any distribution to which he is entitled under the certificate of formation or limited liability company agreement and, if not otherwise provided therein the dissociating member is entitled to receive,

within a reasonable time after the dissociation, the fair value of his interest in the limited liability company as of the date of dissociation based upon his right to share in distributions from the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 38, eff from and after July 1, 1994.

§ 79-29-603. Distribution in kind.

Except as provided in the certificate of formation or limited liability company agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in the certificate of formation or limited liability company agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 39, eff from and after July 1, 1994.

§ 79-29-604. Right to distribution.

Subject to Sections 79-29-605 and 79-29-805, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

SOURCES: Laws, 1994, ch. 402, § 40, eff from and after July 1, 1994.

Cross References — Order of distribution of assets of limited liability company, see § 79-29-805.

§ 79-29-605. Limitations on distribution.

(1) No distribution may be made if, after giving effect to the distribution:

(a) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the certificate of formation or limited liability company agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) of this section either on:

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) A fair valuation or other method that is reasonable under the circumstances.

(3) Except as provided in subsection (4) of this section, the effect of a distribution under subsection (1) of this section is measured as of (a) the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or (b) the date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(4) If terms of any indebtedness of the limited liability company provide that any payment thereon is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, such indebtedness of a limited liability company, and any indebtedness issued as a distribution, is not a liability for purposes of determinations made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

SOURCES: Laws, 1994, ch. 402, § 41, eff from and after July 1, 1994.

Cross References — Subject to this section, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor, see § 79-29-604.

Liability of member or manager for distribution in violation of this section, see § 79-29-606.

Provisions dealing with the purchase or redemption by the professional limited liability company of such company's interests not to be invoked if doing so would violate this section, see § 79-29-908.

§ 79-29-606. Liability for wrongful distribution.

(1) A member or manager who votes for or assents to a distribution in violation of the certificate of formation or limited liability company agreement or Section 79-29-605 is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating Section 79-29-605 or the certificate of formation or limited liability company agreement if it is established that such member or manager did not act in compliance with Section 79-29-605.

(2) Each member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) From each other member or manager who could be held liable under subsection (1) for the unlawful distribution; and

(b) From each member for the amount the member received knowing that the distribution was made in violation of Section 79-29-605, the certificate of formation or the limited liability company agreement.

(3) A proceeding under this section is barred unless it is commenced within two (2) years after the date on which the effect of the distribution is measured under Section 79-29-605.

SOURCES: Laws, 1994, ch. 402, § 42, eff from and after July 1, 1994.

Cross References — Certificate of formation or company agreement cannot limit liability for violation of this section, see § 79-29-403.

ARTICLE 7.

ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS.

SEC.

- 79-29-701. Nature of limited liability company interest.
- 79-29-702. Assignment of limited liability company interest.
- 79-29-703. Rights of creditor.
- 79-29-704. Right of assignee to become a member.
- 79-29-705. Power of estate of deceased or incompetent member.

§ 79-29-701. Nature of limited liability company interest.

A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

SOURCES: Laws, 1994, ch. 402, § 43, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1. Member's interest in specific limited liability company property.

Judgment of the district court in a case to determine ownership of cattle, granting summary judgment for the buyer of the cattle on the ground that the apparent seller was the owner and passed title to the buyer free of a lien, was reversed and remanded, because a fact issue existed on the ownership of the apparent seller; plaintiff bank's and defendant bank's se-

curity interests properly perfected on an individual and his property, attached to the cattle only if the apparent seller was a sole proprietorship of the individual, but if the apparent seller operated as a partnership or limited liability company, the individual did not have sufficient rights in the cattle to encumber them. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549 (5th Cir. 2007).

§ 79-29-702. Assignment of limited liability company interest.

Except as provided in the certificate of formation or limited liability company agreement, a limited liability company interest is assignable in whole or in part. An assignment of a limited liability company interest does not dissolve a limited liability company or entitle the assignee to become or to exercise any rights of a member. An assignment entitles the assignee, to the extent assigned, to share in such profits and losses, to receive such distribution or distributions, and to receive such allocations of income, gain, loss, deduction, credit or similar items to which the assignor would have been entitled. Except as provided in the certificate of formation or limited liability company agreement, a member ceases to be a member upon assignment of the member's entire limited liability company interest. Unless otherwise provided in the certificate of formation or limited liability company agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against, any

or all of the limited liability company interest of the member shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

SOURCES: Laws, 1994, ch. 402, § 44, eff from and after July 1, 1994.

Cross References — Event of dissociation, see § 79-29-307.

§ 79-29-703. Rights of creditor.

On application to a court of competent jurisdiction by a judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment, with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This article does not deprive any member of the benefit of any exemption laws applicable to his limited liability company interest.

SOURCES: Laws, 1994, ch. 402, § 45, eff from and after July 1, 1994.

§ 79-29-704. Right of assignee to become a member.

(1) An assignee of a limited liability company interest may become a member if and to the extent that (a) the certificate of formation or limited liability company agreement so provides or (b) all other members consent.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the certificate of formation or limited liability company agreement and this chapter. An assignee who becomes a member also is liable for the obligations of his assignor to make and return contributions as provided in Articles 5 and 6 of this chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a member and which could not be ascertained from the records required to be kept pursuant to Section 79-29-107.

(3) Unless otherwise provided in the certificate of formation or limited liability company agreement, whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his liability to the limited liability company under Articles 5 and 6 of this chapter.

SOURCES: Laws, 1994, ch. 402, § 46, eff from and after July 1, 1994.

Cross References — Admission of members upon compliance with this section, see § 79-29-301.

§ 79-29-705. Power of estate of deceased or incompetent member.

If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the

member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power the member had to give an assignee the right to become a member. If a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

SOURCES: Laws, 1994, ch. 402, § 47, eff from and after July 1, 1994.

ARTICLE 8.

DISSOLUTION.

SEC.

- | | |
|------------|---|
| 79-29-801. | Nonjudicial dissolution. |
| 79-29-802. | Judicial dissolution. |
| 79-29-803. | Winding up. |
| 79-29-804. | Agency power of managers or members after dissolution. |
| 79-29-805. | Distribution of assets. |
| 79-29-806. | Known claims against dissolved limited liability company. |
| 79-29-807. | Unknown claims against dissolved limited liability company. |

§ 79-29-801. Nonjudicial dissolution.

[For all domestic limited liability companies formed on or before June 30, 1998, and which do not elect to come under the second tier of this section, this section shall read as follows:]

A limited liability company is dissolved and its affairs must be wound up upon the first of the following to occur:

- (a) At the time specified in the certificate of formation;
- (b) Upon the occurrence of the event specified in the certificate of formation or limited liability company agreement;
- (c) Upon the written consent of all members, or such lesser number as may be provided in the certificate of formation or limited liability company agreement;
- (d) Upon an event of dissociation of a member as provided in Section 79-29-307, unless the business of the limited liability company is continued by the consent of all the remaining members within ninety (90) days following the occurrence of any such event or as otherwise provided in the certificate of formation or limited liability company agreement; or
- (e) Upon the entry of a decree of judicial dissolution under Section 79-29-802.

[For all domestic limited liability companies formed on or after July 1, 1998, or for those previously formed such companies which elect to come under the following provisions by filing with the Secretary of State a certificate of amendment specifically stating that the limited liability company is electing to be subject to the following provisions, this section shall read as follows:]

A limited liability company is dissolved and its affairs must be wound up upon the first of the following to occur:

- (a) At the time specified in the certificate of formation;
- (b) Upon the occurrence of the event specified in the certificate of formation or limited liability company agreement;
- (c) Upon the consent of all members, or such lesser number as may be provided in the certificate of formation or limited liability company agreement;
- (d) Upon an event of dissociation of a member as provided in Section 79-29-307, if a majority of the remaining members, or such other number as may be provided in the certificate of formation or limited liability company agreement, consent to do so; or
- (e) Upon the entry of a decree of judicial dissolution under Section 79-29-802.

SOURCES: Laws, 1994, ch. 402, § 48; Laws, 1998, ch. 376, § 6, eff from and after July 1, 1998.

§ 79-29-802. Judicial dissolution.

On application by or for a member, the chancery court for the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company whenever any of the following occurs:

- (a) It is not reasonably practicable to carry on the business in conformity with the certificate of formation or the limited liability company agreement; or
- (b) The managers or the members in control of the limited liability company have been guilty of or have knowingly countenanced persistent and pervasive fraud or abuse of authority or persistent unfairness toward any member, or the property of the limited liability company is being misapplied or wasted by such persons.

SOURCES: Laws, 1994, ch. 402, § 49, eff from and after July 1, 1994.

Cross References — Court ordered dissolution of limited liability company when provisions of this section are applicable, see § 79-29-306.

Dissolution of a limited liability company upon entry of a decree of judicial dissolution under this section, see § 79-29-801.

JUDICIAL DECISIONS

1. Application.

Chancellor had not erred in holding that he did not have standing to bring a derivative claim under Miss. Code Ann. §§ 79-29-101 through 79-29-1201, other-

wise known as the Mississippi LLC Act, because the LLC member's failure to make demand rendered him without standing to bring a derivative suit on the LLC's behalf and Miss. Code Ann. § 79-

29-802 (2001) did not apply. *Blanton v. Prins*, 938 So. 2d 847 (Miss. Ct. App. 2005).

§ 79-29-803. Winding up.

(1) Unless otherwise provided in the certificate of formation or limited liability company agreement, the manager or managers, or, if management of the limited liability company is not vested in a manager or managers, the members who have not wrongfully dissolved a limited liability company, may wind up the limited liability company's affairs; but the chancery court for the county in which the registered office of the limited liability company is located, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee or receiver.

(2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in Section 79-29-204, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of the members.

(3) Unless otherwise provided in the certificate of formation or limited liability company agreement, the persons winding up the affairs of the limited liability company pursuant to this section shall be entitled to reasonable compensation.

SOURCES: Laws, 1994, ch. 402, § 50, eff from and after July 1, 1994.

Cross References — Distribution of assets upon the winding up of a limited liability company, see § 79-29-805.

§ 79-29-804. Agency power of managers or members after dissolution.

(1) Except as provided in subsections (3), (4) and (5) of this section, after an event causing dissolution of the limited liability company any member can bind the limited liability company:

(a) By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the certificate of dissolution shall be presumed to constitute notice of dissolution for purposes of paragraph (1)(b) of this section.

(3) An act of a manager or member which is not binding on the limited liability company pursuant to subsection (1) of this section is binding if it is otherwise authorized by the limited liability company.

(4) An act of a manager or member which would be binding under subsection (1) or would be otherwise authorized but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

(5) If the certificate of formation vests management of the limited liability company in a manager or managers, the manager or managers shall have the authority of a member provided for in subsection (1), and no member shall have such authority if he is acting solely in the capacity of a member.

SOURCES: Laws, 1994, ch. 402, § 51, eff from and after July 1, 1994.

§ 79-29-805. Distribution of assets.

Upon the winding up of a limited liability company, the assets must be distributed as follows:

(a) To creditors, including members and managers who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or by establishment of reserves) other than liabilities for distributions to members under Section 79-29-601 or 79-29-604;

(b) Except as provided in the certificate of formation or limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under Section 79-29-601 or 79-29-604; and

(c) Except as provided in the certificate of formation or limited liability company agreement, to members first for the return of their contributions and secondly respecting their limited liability company interests, in the proportions in which the members share in distributions.

SOURCES: Laws, 1994, ch. 402, § 52, eff from and after July 1, 1994.

Cross References — Subject to this section, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor, see § 79-29-604.

§ 79-29-806. Known claims against dissolved limited liability company.

(1) A dissolved limited liability company may dispose of the known claims against it by filing a certificate of dissolution pursuant to Section 79-29-204 and following the procedure described in this section.

(2) The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty (120) days from the latter of the mailing date of the written notice or the filing of a certificate of dissolution pursuant to Section 79-29-204, by which the dissolved limited liability company must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved limited liability company is barred:

(a) If a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved limited liability company by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety (90) days from the date the claimant receives notice of the rejection of his claim.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

SOURCES: Laws, 1994, ch. 402, § 53, eff from and after July 1, 1994.

Cross References — Rights of claimants who did not receive notice under this section, see § 79-29-807.

§ 79-29-807. Unknown claims against dissolved limited liability company.

(1) A dissolved limited liability company may publish notice of its dissolution pursuant to this section which requests that persons with claims against the limited liability company present them in accordance with the notice.

(2) The notice must:

(a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office (or, if none in this state, its registered office) is or was last located;

(b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(c) State that a claim against the limited liability company not otherwise barred will be barred unless a proceeding to enforce the claim is commenced within five (5) years after the latter of the publication of the notice or the filing of a certificate of dissolution with respect to the limited liability company.

(3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) and files a certificate of dissolution pursuant to Section 79-29-204, the claim of each of the following claimants which is not otherwise barred is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within five (5) years after the latter of the publication date of the newspaper notice or the filing of the certificate of dissolution:

(a) A claimant who did not receive written notice under Section 79-29-806;

(b) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on within such five-year period; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim may be enforced under this section:

(a) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the assets of the limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

SOURCES: Laws, 1994, ch. 402, § 54, eff from and after July 1, 1994.

ARTICLE 9.

PROFESSIONAL LIMITED LIABILITY COMPANIES.

SEC.

- 79-29-901. Applicability of remaining articles of chapter.
- 79-29-902. Article definitions.
- 79-29-903. Election of professional limited liability company status.
- 79-29-904. Purposes.
- 79-29-905. General powers.
- 79-29-906. Rendering professional services.
- 79-29-907. Prohibited activities.
- 79-29-908. Corporate name.
- 79-29-909. Who may become members.
- 79-29-910. Membership interest transfer restrictions.
- 79-29-911. Compulsory acquisition of membership interests after death or disqualification of a member.
- 79-29-912. Acquisition procedure.
- 79-29-913. Court action to appraise membership interests.
- 79-29-914. Court costs and fees of experts.
- 79-29-915. Cancellation of disqualified membership interests.
- 79-29-917. Voting of membership interests.
- 79-29-918. Confidential relationship.
- 79-29-919. Privileged communications.
- 79-29-920. Responsibility for professional services.
- 79-29-921. Merger.
- 79-29-922. Termination of professional activities.
- 79-29-923. Judicial dissolution.
- 79-29-924. Authority to transact business.
- 79-29-925. Application for certificate of authority.
- 79-29-926. Revocation of certificate of authority.
- 79-29-930. Rulemaking by licensing authority.
- 79-29-931. Licensing authority's regulatory jurisdiction.
- 79-29-933. Application to existing professional limited liability companies.

§ 79-29-901. Applicability of remaining articles of chapter.

The other provisions of this chapter apply to professional limited liability companies, both domestic and foreign, to the extent not inconsistent with the provisions of this article.

SOURCES: Laws, 1994, ch. 402, § 55; Laws, 1995, ch. 494, § 36, eff from and after July 1, 1995.

§ 79-29-902. Article definitions.

As used in this article, unless the context requires otherwise:

(a) "Disqualified person" means an individual, general partnership, professional limited liability company or other entity that for any reason is or becomes ineligible under this article to be a member of a professional limited liability company.

(b) "Domestic professional limited liability company" means a professional limited liability company.

(c) "Foreign professional limited liability company" means a limited liability company formed for the purpose of rendering professional services under a law other than the law of this state.

(d) "Law" includes rules promulgated in accordance with Section 79-29-929.

(e) "Licensing authority" means the office, board, agency, court or other authority in this state empowered to license or otherwise authorize the rendition of a professional service.

(f) "Professional limited liability company" means a limited liability company, other than a foreign professional limited liability company, subject to the provisions of this article.

(g) "Professional service" means a service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service, including, without limitation, certified public accountants, dentists, architects, veterinarians, osteopaths, physicians, surgeons and attorneys-at-law.

(h) "Qualified person" means an individual, general partnership, professional limited liability company or other entity that is eligible under this article to be a member of a professional limited liability company.

SOURCES: Laws, 1994, ch. 402, § 56; Laws, 1995, ch. 494, § 37, eff from and after July 1, 1995.

§ 79-29-903. Election of professional limited liability company status.

(1) One or more persons may form a professional limited liability company by delivering to the Secretary of State for filing a certificate of formation which includes a statement that (a) it is a professional limited liability company, and (b) its purpose is to render the specified professional services.

(2) A limited liability company formed under this chapter (other than a professional limited liability company in existence on July 1, 1995, which is subject to the provisions of Section 79-29-933) may elect professional limited liability company status by amending its certificate of formation to comply with subsection (1) and Section 79-29-908.

(3) Nothing in this article shall be construed to require a person rendering professional services in this state to render such services through a professional limited liability company or foreign professional limited liability company unless a law of this state other than this article so requires.

SOURCES: Laws, 1994, ch. 402, § 57; Laws, 1995, ch. 494, § 38, eff from and after July 1, 1995.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in (2). The reference to “Section 79-29-932” was changed to “Section 79-29-933.” The Joint Committee ratified the correction at its August 5, 2008, meeting.

Cross References — Filing fees, see § 79-29-1203.

§ 79-29-904. Purposes.

(1) Except to the extent authorized by subsection (2), a limited liability company may elect professional limited liability company status under Section 79-29-903 solely for the purpose of rendering professional services (including services ancillary to them) and solely within a single profession.

(2) A limited liability company may elect professional limited liability company status under Section 79-29-903 for the purpose of rendering professional services within two (2) or more professions, and for the purpose of engaging in any lawful business authorized by Section 79-29-108(1) to the extent the combination of professional purposes or of professional and business purposes is not prohibited by the licensing law of this state applicable to each profession in the combination.

SOURCES: Laws, 1994, ch. 402, § 58; Laws, 1995, ch. 494, § 39, eff from and after July 1, 1995.

Cross References — Licensing authority’s regulatory jurisdiction over individuals rendering professional service not restricted by this article, see § 79-29-931.

§ 79-29-905. General powers.

(1) Except as provided in subsection (2) of this section, a professional limited liability company has the powers enumerated in Section 79-29-108(2).

(2) A professional limited liability company may be a promoter, general partner, member, associate or manager of a partnership, joint venture, trust or other entity only if the entity is engaged solely in rendering professional services or in carrying on business authorized by the professional limited liability company’s certificate of formation and not prohibited by the licensing

laws applicable to each profession rendering services through the professional limited liability company.

SOURCES: Laws, 1994, ch. 402, § 59; Laws, 1995, ch. 494, § 40, eff from and after July 1, 1995.

§ 79-29-906. Rendering professional services.

(1) A domestic or foreign limited liability company may render professional services in this state only through individuals licensed or otherwise authorized in this state to render the services.

(2) Subsection (1) does not:

(a) Require an individual employed by a professional limited liability company to be licensed to perform services for the limited liability company if a license is not otherwise required;

(b) Prohibit a licensed individual from rendering professional services in his individual capacity although he is a member, manager, employee or agent of a domestic or foreign professional limited liability company;

(c) Prohibit an individual licensed in another state from rendering professional services for a domestic or foreign professional limited liability company in this state if not prohibited by the licensing authority.

SOURCES: Laws, 1994, ch. 402, § 60; Laws, 1995, ch. 494, § 41, eff from and after July 1, 1995.

§ 79-29-907. Prohibited activities.

(1) A professional limited liability company may not render any professional service other than the professional service authorized by its certificate of formation.

(2) Subsection (1) does not prohibit a professional limited liability company from investing its funds in real estate, mortgages, securities, or any other type of investment or from owning real or personal property appropriate for carrying on its business.

SOURCES: Laws, 1994, ch. 402, § 61; Laws, 1995, ch. 494, § 42, eff from and after July 1, 1995.

§ 79-29-908. Corporate name.

(1) The name of a domestic professional limited liability company and of a foreign professional limited liability company authorized to transact business in this state, in addition to satisfying the requirements of Sections 79-29-104 and 79-29-1004:

(a) Must contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC";

(b) May not contain language stating or implying that it is formed for a purpose other than that authorized by Section 79-29-904 and its certificate of formation; and

(c) Must conform with any rule promulgated by the licensing authority having jurisdiction over a professional service described in the limited liability company's certificate of formation.

(2) Sections 79-29-104 and 79-29-1004 do not prevent the use of a name otherwise prohibited by those sections if it is the personal name of a member or former member of the domestic or foreign professional limited liability company or the name of an individual who was associated with a predecessor of the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 62; Laws, 1995, ch. 494, § 43, eff from and after July 1, 1995.

§ 79-29-909. Who may become members.

(1) No professional limited liability company organized under the provisions of this article may have as a member any person other than:

(a) Individuals who are authorized by law in this or another state to render a professional service described in the limited liability company's certificate of formation;

(b) A professional limited liability company, domestic or foreign, authorized by law in this state to render a professional service described in the limited liability company's certificate of formation;

(c) General partnerships in which all the partners are individuals or entities otherwise authorized by paragraph (a), (b) or (d) of this subsection (1) to be members of a professional limited liability company under this article;

(d) Any other individual or entity not included in paragraph (a), (b) or (c) of this subsection (1) if expressly authorized by the licensing authority having jurisdiction over the professional services described in the certificate of formation of the professional limited liability company.

(2) A licensing authority with jurisdiction over a profession may by rule restrict or condition, or revoke in part, the authority of a professional limited liability company subject to its jurisdiction to issue membership interests. A rule promulgated under this section does not, of itself, make a member of a professional limited liability company at the time the rule becomes effective a disqualified person.

(3) The certificate of formation may provide for additional limitations and restrictions on members or for additional qualifications of members and such limitations, restrictions or qualifications shall be valid and enforceable in each instance.

(4) Membership interests issued in violation of this section or a rule promulgated under this section are void.

SOURCES: Laws, 1994, ch. 402, § 63; Laws, 1995, ch. 494, § 44, eff from and after July 1, 1995.

§ 79-29-910. Membership interest transfer restrictions.

(1) A member of a professional limited liability company may transfer his membership interests only to qualified persons. A member of a professional limited liability company may pledge his membership interest to a qualified person or to a disqualified person.

(2) A transfer of a membership interest made in violation of subsection (1), except one made by operation of law or court judgment, is void.

SOURCES: Laws, 1994, ch. 402, § 64; Laws, 1995, ch. 494, § 45, eff from and after July 1, 1995.

§ 79-29-911. Compulsory acquisition of membership interests after death or disqualification of a member.

(1) A professional limited liability company must acquire (or cause to be acquired by a qualified person) a member's membership interest if:

(a) The member dies and the successor in interest to the deceased member is not a qualified person, except as provided in subsection (3);

(b) The member becomes a disqualified person, except as provided in subsection (3); or

(c) The membership interest is transferred by operation of law or court judgment to a disqualified person, except as provided in subsection (3).

(2) If a price for the membership interest is established in accordance with the certificate of formation or limited liability company agreement or by private agreement, that price controls. If the price is not so established, the limited liability company shall acquire the membership interest in accordance with Section 79-29-912. If the disqualified person rejects the limited liability company's purchase offer made pursuant to Section 79-29-912, either the person or the limited liability company may commence a proceeding under Section 79-29-913 to determine the price of the membership interest.

(3) This section does not require the acquisition of membership interests in the event of disqualification if the disqualification lasts no more than five (5) months from the date the disqualification or transfer occurs. A member who becomes a disqualified person shall notify the limited liability company promptly.

(4) This section and Section 79-29-912 do not prevent or relieve a professional limited liability company from paying pension benefits or other deferred compensation for services rendered to a former member if otherwise permitted by law.

(5) A provision for the acquisition of membership interests contained in a professional limited liability company's certificate of formation or limited liability agreement, or in a private agreement, is specifically enforceable.

SOURCES: Laws, 1994, ch. 402, § 65; Laws, 1995, ch. 494, § 46, eff from and after July 1, 1995.

§ 79-29-912. Acquisition procedure.

(1) If membership interests must be acquired under Section 79-29-911, the professional limited liability company shall deliver a written notice to the executor or administrator of the estate of its deceased member, or to the disqualified person or transferee, offering to purchase the membership interest at a price the limited liability company believes represents the membership interests' fair value as of the date of death, disqualification or transfer. The offer notice must be accompanied by the limited liability company's balance sheet for the most recent fiscal year ending prior to the date of death or disqualification, an income statement for that fiscal year, a reconciliation of members' capital accounts for that fiscal year, and the latest available interim financial statements, if any.

(2) The disqualified person has thirty (30) days from the effective date of the notice to accept the limited liability company's offer or demand that the limited liability company commence a proceeding under Section 79-29-913 to determine the fair value of his membership interest. If he accepts the offer, the limited liability company shall make payment for the membership interests within sixty (60) days from the effective date of the offer notice (unless a later date is agreed on) upon the disqualified person's surrender of his membership interest to the limited liability company.

(3) After the limited liability company makes payment for the membership interest, the disqualified person has no further interest in the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 66; Laws, 1995, ch. 494, § 47, eff from and after July 1, 1995.

Cross References — Applicability of this section to professional limited liability company in existence on July 1, 1995, see § 79-29-933.

§ 79-29-913. Court action to appraise membership interests.

(1) If the disqualified member does not accept the professional limited liability company's offer under Section 79-29-912(2) within the thirty-day period, the member during the following thirty-day period may deliver a written notice to the limited liability company demanding that it commence a proceeding to determine the fair value of the membership interest. The limited liability company may commence a proceeding at any time during the sixty (60) days following the effective date of its offer notice. If it does not do so, the member may commence a proceeding against the limited liability company to determine the fair value of his membership interest.

(2) The limited liability company or disqualified member shall commence the proceeding in the chancery court of the county where the limited liability company's principal office (or, if none in this state, its registered office) is located. The limited liability company shall make the disqualified person a party to the proceeding as in an action against his membership interest. The

jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the power described in the order appointing them, or in any amendment to it.

(4) The disqualified member is entitled to judgment for the fair value of his membership interest determined by the court as of the date of death, disqualification or transfer, together with interest from that date at a rate found by the court to be fair and equitable.

(5) The court may order the judgment paid in installments determined by the court.

SOURCES: Laws, 1995, ch. 494, § 48, eff from and after July 1, 1995.

Cross References — Applicability of this section to professional limited liability company in existence on July 1, 1995, see § 79-29-933.

§ 79-29-914. Court costs and fees of experts.

(1) The court in an appraisal proceeding commenced under Section 79-29-913 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and shall assess the costs against the professional limited liability company. But the court may assess costs against the disqualified member, in an amount the court finds equitable, if the court finds the member acted arbitrarily, vexatiously or not in good faith in refusing to accept the limited liability company's offer.

(2) The court may also assess the fees and expenses of counsel and experts for the disqualified member against the limited liability company and in favor of the member if the court finds that the fair value of his membership interest substantially exceeded the amount offered by the limited liability company or that the limited liability company did not make an offer.

SOURCES: Laws, 1995, ch. 494, § 49, eff from and after July 1, 1995.

Cross References — Applicability of this section to professional limited liability company in existence on July 1, 1995, see § 79-29-933.

§ 79-29-915. Cancellation of disqualified membership interests.

If the membership interest of a disqualified person is not acquired under Section 79-29-912 or 79-29-913 within ten (10) months after the death of the member or within five (5) months after the disqualification or transfer, the professional limited liability company shall immediately cancel the membership interest on its books and the disqualified person has no further interest as a member in the limited liability company other than his right to payment of

the fair value of the membership interest under Section 79-29-912 or 79-29-913.

SOURCES: Laws, 1995, ch. 494, § 50, eff from and after July 1, 1995.

§ 79-29-917. Voting of membership interests.

(1) Only a qualified person may be appointed a proxy to vote the membership interest of a professional limited liability company.

(2) A voting trust with respect to membership interests of a professional limited liability company is not valid unless all of its trustees and beneficiaries are qualified persons. But if a beneficiary who is a qualified person dies or becomes disqualified, a voting trust valid under this subsection continues to be valid for ten (10) months after the date of death or for five (5) months after the disqualification occurred.

SOURCES: Laws, 1995, ch. 494, § 51, eff from and after July 1, 1995.

§ 79-29-918. Confidential relationship.

(1) The relationship between an individual rendering professional services as an employee of a domestic or foreign professional limited liability company and his client or patient is the same as if the individual were rendering the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company and the client or patient for whom its employee is rendering professional services is the same as that between the client or patient and the employee.

SOURCES: Laws, 1995, ch. 494, § 52, eff from and after July 1, 1995.

§ 79-29-919. Privileged communications.

A privilege applicable to communications between an individual rendering professional services and the person receiving the services recognized under the statute or common law of this state is not affected by this article. The privilege applies to a domestic or foreign professional limited liability company and to its employees in all situations in which it applies to communications between an individual rendering professional services on behalf of the limited liability company and the person receiving the services.

SOURCES: Laws, 1995, ch. 494, § 53, eff from and after July 1, 1995.

§ 79-29-920. Responsibility for professional services.

(1) Each individual who renders professional services as an employee of a domestic or foreign professional limited liability company is liable for a negligent or wrongful act or omission in which he personally participates to the same extent as if he rendered the services as a sole practitioner. A member or

an employee of a domestic or foreign professional limited liability company is not liable, however, for the conduct of other members or employees of the limited liability company, except a person under his direct supervision and control, while rendering professional services on behalf of the professional limited liability company to the person for whom such professional services were being rendered.

(2) A domestic or foreign professional limited liability company whose employees perform professional services within the scope of their employment or of their apparent authority to act for the limited liability company is liable to the same extent as its employees.

SOURCES: Laws, 1995, ch. 494, § 54, eff from and after July 1, 1995.

JUDICIAL DECISIONS

1. Attorney liability.

Pursuant to Miss. Code Ann. § 79-29-920, the attorney could not be held liable unless he either personally participated in a negligent or wrongful act or directly supervised someone who committed wrongful conduct; the client's allegations that the attorney was a member of the firm and that the firm used the terms

"we," "us," and "the firm" in correspondence, even if accepted as true, did not meet either of these two requirements, and there was nothing in the record to suggest that the attorney had any contact whatsoever with the client. *Keszenheimer v. Boyd*, 897 So. 2d 190 (Miss. Ct. App. 2004), cert. denied, 896 So. 2d 373 (Miss. 2005).

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnerships §§ 831-883.

CJS. 68 C.J.S., Partnerships §§ 423 et seq.

§ 79-29-921. Merger.

(1) If all the members of the disappearing and surviving limited liability companies are qualified to be members of the surviving limited liability company, a professional limited liability company may merge with another domestic or foreign professional limited liability company or with a domestic or foreign limited liability company.

(2) If the surviving limited liability company is to render professional services in this state, it must comply with this article.

SOURCES: Laws, 1995, ch. 494, § 55, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnerships § 811.

§ 79-29-922. Termination of professional activities.

If a professional limited liability company ceases to render professional services, it must amend its certificate of formation to delete references to rendering professional services and to conform its name to the requirements of Section 79-29-104. After the amendment becomes effective the limited liability company may continue in existence as a limited liability company under the Mississippi Limited Liability Company Act other than the provisions of this article.

SOURCES: Laws, 1995, ch. 494, § 56, eff from and after July 1, 1995.

Cross References — Filing fees, see § 79-29-1203.

§ 79-29-923. Judicial dissolution.

The Attorney General may commence a proceeding under Section 79-29-802 to dissolve a professional limited liability company if:

(a) The Secretary of State or a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation serves written notice on the limited liability company under Section 79-29-111 that it has violated or is violating a provision of this article;

(b) The limited liability company does not correct each alleged violation, or demonstrate to the reasonable satisfaction of the Secretary of State or licensing authority that it did not occur, within sixty (60) days after service of the notice is perfected under Section 79-29-111; and

(c) The Secretary of State or licensing authority certifies to the Attorney General a description of the violation, that it notified the limited liability company of the violation, and that the limited liability company did not correct it, or demonstrate that it did not occur, within sixty (60) days after perfection of service of the notice.

SOURCES: Laws, 1995, ch. 494, § 57, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnerships §§ 910-915. **CJS.** 68 C.J.S., Partnerships §§ 440-441.

§ 79-29-924. Authority to transact business.

(1) A foreign professional limited liability company may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(2) A foreign professional limited liability company may not obtain a certificate of authority unless:

(a) Its name satisfies the requirements of Section 79-29-908;

(b) It is formed for one or more of the purposes described in Section 79-29-904; and

(c) All of its members would be qualified persons if the foreign professional limited liability company were a domestic professional limited liability company.

SOURCES: Laws, 1995, ch. 494, § 58, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 18 Am. Jur. 2d, Corporations §§ 9-15.

18A Am. Jur. 2d, Corporations §§ 165-187, 225-227, 264, 265.

§ 79-29-925. Application for certificate of authority.

The application of a foreign professional limited liability company for a certificate of authority to render professional services in this state must contain the information called for by Section 79-29-1002 and in addition include a statement that all of its members meet the requirements of Section 79-29-924.

SOURCES: Laws, 1995, ch. 494, § 59, eff from and after July 1, 1995.

Cross References — Filing fees, see § 79-29-1203.

RESEARCH REFERENCES

Am Jur. 18A Am. Jur. 2d, Corporations § 204.

CJS. 19 C.J.S., Corporations §§ 968 et seq.

§ 79-29-926. Revocation of certificate of authority.

The Secretary of State may administratively revoke the certificate of authority of a foreign professional limited liability company authorized to transact business in this state if a licensing authority with jurisdiction over a professional service described in the limited liability company's certificate of formation certifies to the Secretary of State that the limited liability company has violated or is violating a provision of this article and describes the violation. Such administrative revocation may be challenged by the foreign professional limited liability company in the chancery court of the county where the foreign professional limited liability company maintains its principal place of business in this state.

SOURCES: Laws, 1995, ch. 494, § 60, eff from and after July 1, 1995.

RESEARCH REFERENCES

Am Jur. 59A Am. Jur. 2d, Partnerships §§ 784, 894.

§ 79-29-930. Rulemaking by licensing authority.

Each licensing authority is empowered to promulgate rules expressly authorized by this article if the rules are consistent with the public interest or required by the public health or welfare or by generally recognized standards of professional conduct.

SOURCES: Laws, 1995, ch. 494, § 61, eff from and after July 1, 1995.

§ 79-29-931. Licensing authority's regulatory jurisdiction.

This article does not restrict the jurisdiction of a licensing authority over individuals rendering a professional service within the jurisdiction of the licensing authority, nor does it affect the interpretation or application of any law pertaining to standards of professional conduct.

SOURCES: Laws, 1995, ch. 494, § 62, eff from and after July 1, 1995.

§ 79-29-933. Application to existing professional limited liability companies.

(1) Except as otherwise provided in this section, this article applies to professional limited liability companies in existence on July 1, 1995. A professional limited liability company in existence on July 1, 1995, may, but is not required to, amend its certificate of formation to comply with this article. If a professional limited liability company in existence on July 1, 1995, amends its certificate of formation for any purpose after July 1, 1995, it must also amend its certificate of formation to comply with this article.

(2) This article does not apply to a limited liability company now existing or later formed under a law of this state that is not a professional limited liability company unless the limited liability company elects professional limited liability company status under Section 79-29-903.

(3) This article does not affect an existing or future right or privilege to render professional services through the use of any other form of business entity.

(4) Unless otherwise specifically provided by an amendment to the certificate of formation, for professional limited liability companies in existence on July 1, 1995, Sections 79-29-912, 79-29-913 and 79-29-914, Mississippi Code of 1972, shall be applied by substituting the term "book value" for the term "fair value" in such sections only. Book value shall be determined from the books and records of the professional limited liability company in accordance with the regular method of accounting used by the professional limited liability company and shall be determined as of the end of the month immediately preceding the death or disqualification of the member.

SOURCES: Laws, 1995, ch. 494, § 63, eff from and after July 1, 1995.

ARTICLE 10.

FOREIGN LIMITED LIABILITY COMPANIES.

SEC.	
79-29-1001.	Law governing.
79-29-1002.	Registration; application to registered foreign limited liability companies.
79-29-1003.	Issuance of registration.
79-29-1004.	Name.
79-29-1005.	Changes and amendments.
79-29-1006.	Cancellation of registration.
79-29-1007.	Transaction of business without registration.
79-29-1008.	Transactions not constituting transacting business.
79-29-1009.	Action by Attorney General.
79-29-1010.	Execution; liability.

Editor's Note — Provisions governing foreign limited liability companies were formerly found in §§ 79-6-1 et seq.

§ 79-29-1001. Law governing.

Subject to the Constitution of this state, the laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members, and a foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

SOURCES: Laws, 1994, ch. 402, § 67, eff from and after July 1, 1994.

Cross References — “Derivative proceeding” as meaning a civil suit in the right of a foreign limited liability company, to the extent provided in this article, see § 79-29-103.

§ 79-29-1002. Registration; application to registered foreign limited liability companies.

(1) Before transacting business in this state, a foreign limited liability company, including a foreign limited liability company formed to render professional services, shall register with the Secretary of State. In order to register, a foreign limited liability company shall deliver to the office of the Secretary of State for filing one (1) original application for registration as a foreign limited liability company, signed by a person with authority to do so under the laws of the state or other jurisdiction of its formation and setting forth:

- (a) The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
- (b) The state or other jurisdiction and date of its formation;

(c) The name and street and mailing address of the registered agent for service of process on the foreign limited liability company which the foreign limited liability company has elected to appoint and who meets the requirements of subsection (1)(b) of Section 79-29-106;

(d) A statement that the Secretary of State is appointed the registered agent of the foreign limited liability company for service of process if the registered agent's authority has been revoked or if the registered agent cannot be found or served with the exercise of reasonable diligence;

(e) The address of the office required to be maintained in the state or other jurisdiction of its organization by the laws of that state or other jurisdiction or, if not so required, the address of the principal office of the foreign limited liability company; and

(f) If the limited liability company is to have a specific date of dissolution, the latest date upon which the foreign limited liability company is to dissolve; and

(g) If management of the limited liability company is vested in a manager or managers, a statement to that effect; and

(h) Any other matters the manager or members determine to include therein.

(2) A foreign limited liability company properly registered as such with the Secretary of State before July 1, 1994, shall not be required to submit a new application for registration, nor to pay any related application fee, in order to continue to transact business in this state, but shall otherwise be subject to the provisions of this chapter, including but not limited to Section 79-29-1005.

SOURCES: Laws, 1994, ch. 402, § 68; Laws, 1995, ch. 362, § 12; Laws, 1997, ch. 418, § 38, eff from and after July 1, 1997.

Cross References — Issuance of registration if requirement of this section are met, see § 79-29-1003.

Cancellation or registration revokes authority of registered agent for service of process designates pursuant to this section, see § 79-29-1006.

Filing fees, see § 79-29-1203.

§ 79-29-1003. Issuance of registration.

If the Secretary of State finds that an application for registration meets the requirements of Section 79-29-1002 and all requisite fees as provided in Section 79-29-1203 have been paid, he shall:

(a) Endorse on the original the word "Filed" and the month, day and year of the filing thereof;

(b) File in his office the original of the application; and

(c) Return a copy to the person who delivered it for filing or his representative.

SOURCES: Laws, 1994, ch. 402, § 69; Laws, 1995, ch. 362, § 13; Laws, 1997, ch. 418, § 39, eff from and after July 1, 1997.

§ 79-29-1004. Name.

A foreign limited liability company may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes the words "limited liability company" or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company.

SOURCES: Laws, 1994, ch. 402, § 70, eff from and after July 1, 1994.

§ 79-29-1005. Changes and amendments.

If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly deliver to the office of the Secretary of State for filing a certificate, signed and acknowledged by a person authorized to do so under the laws of the state or other jurisdiction of its formation, correcting such statement, together with a fee as set forth in Section 79-29-1203.

SOURCES: Laws, 1994, ch. 402, § 71; Laws, 1997, ch. 418, § 40, eff from and after July 1, 1997.

Cross References — Application of this section to foreign limited liability companies properly registered before July 1, 1994, see § 79-29-1002.

§ 79-29-1006. Cancellation of registration.

(1) A foreign limited liability company registered under this chapter shall cancel its registration upon completion of the winding up of its affairs.

(2) A foreign limited liability company may cancel its registration whenever it ceases transacting business in this state.

(3) Registration is canceled by delivering to the office of the Secretary of State for filing a certificate of cancellation signed by a person authorized to do so under the laws of the state or other jurisdiction of its formation and paying the fee set forth in Section 79-29-1203.

(4) A cancellation revokes the authority of the registered agent for service of process designated pursuant to Section 79-29-1002 and operates as a consent that the Secretary of State may accept service of process on the foreign limited liability company with respect to causes of action arising out of the transaction of business in this state.

SOURCES: Laws, 1994, ch. 402, § 72; Laws, 1997, ch. 418, § 41, eff from and after July 1, 1997.

§ 79-29-1007. Transaction of business without registration.

(1) A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(2) The failure of a foreign limited liability company to register in this state does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(3) A member of a foreign limited liability company is not liable for the debts, obligations or liabilities of the foreign limited liability company solely by reason of the foreign limited liability company having transacted business in this state without registration.

(4) By transacting business in this state without registration, a foreign limited liability company appoints the Secretary of State as its registered agent for service of process with respect to causes of action arising out of the transaction of business in this state.

SOURCES: Laws, 1994, ch. 402, § 73, eff from and after July 1, 1994.

RESEARCH REFERENCES

CJS. 18 C.J.S., Corporations §§ 1023-1036.

§ 79-29-1008. Transactions not constituting transacting business.

(1) The following activities of a foreign limited liability company, among others, do not constitute transacting business in this state within the meaning of this article:

- (a) Maintaining, defending, or settling any proceeding;
- (b) Holding meetings of its members or carrying on any other activities concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositories with respect to those securities or interests;
- (e) Selling through independent contractors;
- (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or

(k) Transacting business in interstate commerce.

(2) A foreign limited liability company shall not be considered to be transacting business in this state solely because it:

(a) Owns a controlling interest in a corporation or a foreign corporation that transacts business in this state;

(b) Is a limited partner of a limited partnership or foreign limited partnership that is transacting business in this state; or

(c) Is a member or manager of a limited liability company or foreign limited liability company that is transacting business in this state.

(3) This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

(4) A foreign limited liability company which is a general partner of any general or limited partnership, joint venture, syndicate, pool or other association of any kind (other than a limited liability company), whether or not such foreign limited liability company shares with or delegates to others control of such entity, which entity is transacting business in this state, is hereby declared to be transacting business in this state.

SOURCES: Laws, 1994, ch. 402, § 74, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 283 et seq.

§ 79-29-1009. Action by Attorney General.

The Attorney General may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this article.

SOURCES: Laws, 1994, ch. 402, § 75, eff from and after July 1, 1994.

RESEARCH REFERENCES

ALR. Power of state to subject foreign corporation to jurisdiction of its courts on sole ground that corporation committed tort within state. 25 A.L.R.2d 1202.

Am Jur. 36 Am. Jur. 2d, Foreign Corporations §§ 240 et seq.

CJS. 18 C.J.S., Corporations §§ 1004-1010, 1036.

§ 79-29-1010. Execution; liability.

Section 79-29-205(4) shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

SOURCES: Laws, 1994, ch. 402, § 76, eff from and after July 1, 1994.

ARTICLE 11.

DERIVATIVE ACTIONS.

SEC.

- 79-29-1101. Proper plaintiff.
- 79-29-1102. Demand.
- 79-29-1103. Stay of proceedings.
- 79-29-1104. Dismissal.
- 79-29-1105. Discontinuance or settlement.
- 79-29-1106. Payment of expenses.
- 79-29-1107. Applicability to foreign limited liability companies.

§ 79-29-1101. Proper plaintiff.

A member may not commence or maintain a derivative proceeding unless the member:

(a) Was a member of the limited liability company at the time of the act or omission complained of or became a member through transfer by operation of law from one who was a member at that time; and

(b) Fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company.

SOURCES: Laws, 1994, ch. 402, § 77, eff from and after July 1, 1994.

§ 79-29-1102. Demand.

No member may commence a derivative proceeding until:

(a) A written demand has been made upon the limited liability company to take suitable action; and

(b) Ninety (90) days have expired from the date the demand was made unless the member has earlier been notified that the demand has been rejected by the limited liability company or unless irreparable injury to the limited liability company would result by waiting for the expiration of the ninety-day period.

SOURCES: Laws, 1994, ch. 402, § 78, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1. Standing.

Chancellor had not erred in holding that he did not have standing to bring a derivative claim under Miss. Code Ann. §§ 79-29-101 to 79-29-1201, otherwise known as the Mississippi LLC Act, be-

cause the LLC member's failure to make demand rendered him without standing to bring a derivative suit on the LLC's behalf and Miss. Code Ann. § 79-29-802 (2001) did not apply. *Blanton v. Prins*, 938 So. 2d 847 (Miss. Ct. App. 2005).

§ 79-29-1103. Stay of proceedings.

If the limited liability company commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

SOURCES: Laws, 1994, ch. 402, § 79, eff from and after July 1, 1994.

Cross References — Jurisdiction in derivative proceeding in the right of a foreign limited liability company for matters covered by this section, see § 79-29-1107.

§ 79-29-1104. Dismissal.

(1) A derivative proceeding shall be dismissed by the court on motion by the limited liability company if one (1) of the groups specified in subsection (2) or (6) of this section has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the limited liability company.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) shall be made by one (1) of the following:

(a) A majority vote of independent managers present at a meeting of managers if independent managers constitute a majority of all managers;

(b) A majority vote of independent members at a meeting of the members, whether or not such independent members constituted a majority of all members; or

(c) A majority vote of a committee consisting of two or more independent managers appointed by the majority vote of independent managers present at a meeting of managers, whether or not such independent managers constituted a majority of all managers.

(3) None of the following shall by itself cause a manager or member to be considered not independent for purposes of this section:

(a) The nomination or election of the manager by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the manager or member as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the manager or member of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the manager or member.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a member, the complaint shall allege with particularity facts establishing either:

(a) That a majority of the persons making the determination under subsection (2) of this section were not independent at the time the determination was made; or

(b) That the requirements of subsection (1) of this section have not been met.

(5) If the determination in subsection (1) is made by a committee pursuant to paragraph (2)(c) of this section and a majority of managers are not independent at the time the determination is made, or if the determination in subsection (1) is made by the members pursuant to paragraph (2)(b) of this section and a majority of the members are not independent at the time the determination is made, then the limited liability company shall have the burden of proving that the requirements of subsection (1) have been met. In all other cases, the plaintiff shall have the burden of proving that the requirements of subsection (1) have not been met.

(6) The court may appoint a panel of one or more independent persons upon motion by the limited liability company to make a determination whether the maintenance of the derivative proceeding is in the best interests of the limited liability company. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) have not been met.

SOURCES: Laws, 1994, ch. 402, § 80, eff from and after July 1, 1994.

Cross References — Jurisdiction in derivative proceeding in the right of a foreign limited liability company for matters covered by this section, see § 79-29-1107.

§ 79-29-1105. Discontinuance or settlement.

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the limited liability company's members or a class of members, the court shall direct that notice be given to the members affected.

SOURCES: Laws, 1994, ch. 402, § 81, eff from and after July 1, 1994.

Cross References — Jurisdiction in derivative proceeding in the right of a foreign limited liability company for matters covered by this section, see § 79-29-1107.

§ 79-29-1106. Payment of expenses.

On termination of the derivative proceeding the court may:

(a) Order the limited liability company to pay the plaintiff's reasonable expenses (including attorney fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the limited liability company; or

(b) Order the plaintiff to pay any defendant's reasonable expenses (including attorney fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

SOURCES: Laws, 1994, ch. 402, § 82, eff from and after July 1, 1994.

§ 79-29-1107. Applicability to foreign limited liability companies.

In any derivative proceeding brought in the courts of this state in the right of a foreign limited liability company, the matters covered by this article shall be governed by the laws of the jurisdiction of formation of the foreign limited liability company, except for matters covered by Sections 79-29-1103, 79-29-1104 and 79-29-1105.

SOURCES: Laws, 1994, ch. 402, § 83, eff from and after July 1, 1994.

ARTICLE 12.**MISCELLANEOUS.****SEC.**

- 79-29-1201. Construction and application.
- 79-29-1202. Severability.
- 79-29-1203. Fees.
- 79-29-1204. Powers of Secretary of State.

§ 79-29-1201. Construction and application.

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(3) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for the purposes of convenience only and shall not control or affect the construction of this chapter.

SOURCES: Laws, 1994, ch. 402, § 84, eff from and after July 1, 1994.

§ 79-29-1202. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SOURCES: Laws, 1994, ch. 402, § 85, eff from and after July 1, 1994.

§ 79-29-1203. Fees.

The Secretary of State shall charge and collect a fee for:

- (a) Filing of Reservation of Limited Liability Company Name, Twenty-Five Dollars (\$25.00).
- (b) Filing of Change of Address of Registered Agent, Twenty-Five Dollars (\$25.00).
- (c) Filing of Resignation of Registered Agent, Five Dollars (\$5.00).
- (d) Filing of Certificate of Formation, Fifty Dollars (\$50.00).
- (e) Filing of Amendment to Certificate of Formation, Fifty Dollars (\$50.00).
- (f) Filing of Certificate of Dissolution, Twenty-Five Dollars (\$25.00).
- (g) Filing of Certificate of Cancellation, Twenty-Five Dollars (\$25.00).
- (h) Filing of Restated Certificate of Formation or Amended and Restated Certificate of Formation, Twenty-Five Dollars (\$25.00).
- (i) Filing of Certificate of Withdrawal, Twenty-Five Dollars (\$25.00).
- (j) Filing of Application for Registration of Foreign Limited Liability Company, Two Hundred Fifty Dollars (\$250.00).
- (k) Filing of Certificate Correcting Application for Registration of Foreign Limited Liability Company, Fifty Dollars (\$50.00).
- (l) Filing of Certificate of Cancellation of Registration of Foreign Limited Liability Company, Twenty-Five Dollars (\$25.00).
- (m) Any other document required or permitted to be filed under this chapter, Twenty-Five Dollars (\$25.00).

SOURCES: Laws, 1994, ch. 402, § 86, eff from and after July 1, 1994.

Cross References — Issuance of registration to foreign limited liability company if all requisite fees specified in this section have been paid, see § 79-29-1003.

§ 79-29-1204. Powers of Secretary of State.

The Secretary of State shall have the powers reasonably necessary to perform the duties required of him under the provisions of this chapter.

SOURCES: Laws, 1994, ch. 402, § 87, eff from and after July 1, 1994.

JUDICIAL DECISIONS

Cited in KBL Props., LLC v. Bellin, 900 So. 2d 1160 (Miss. 2005).

CHAPTER 31

Mississippi Registration of Foreign Limited Liability Partnerships Act [Repealed]

§§ 79-31-1 through 79-31-39. Repealed.

Repealed by Laws, 1995, ch. 353, § 25, eff from and after July 1, 1995.

§ 79-31-1. [Laws, 1994, ch. 390, § 1]

§ 79-31-3. [Laws, 1994, ch. 390, § 2]

§ 79-31-5. [Laws, 1994, ch. 390, § 3]

§ 79-31-7. [Laws, 1994, ch. 390, § 4]

§ 79-31-9. [Laws, 1994, ch. 390, § 5]

§ 79-31-11. [Laws, 1994, ch. 390, § 6]

§ 79-31-13. [Laws, 1994, ch. 390, § 7]

§ 79-31-15. [Laws, 1994, ch. 390, § 8]

§ 79-31-17. [Laws, 1994, ch. 390, § 9]

§ 79-31-19. [Laws, 1994, ch. 390, § 10]

§ 79-31-21. [Laws, 1994, ch. 390, § 11]

§ 79-31-23. [Laws, 1994, ch. 390, § 12]

§ 79-31-25. [Laws, 1994, ch. 390, § 13]

§ 79-31-27. [Laws, 1994, ch. 390, § 14]

§ 79-31-29. [Laws, 1994, ch. 390, § 15]

§ 79-31-31. [Laws, 1994, ch. 390, § 16]

§ 79-31-33. [Laws, 1994, ch. 390, § 17]

§ 79-31-35. [Laws, 1994, ch. 390, § 18]

§ 79-31-37. [Laws, 1994, ch. 390, § 19]

§ 79-31-39. [Laws, 1994, ch. 390, § 20]

Editor's Note — Former § 79-31-1 was entitled: Short title. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-3 was entitled: Amendment and repeal of provisions of chapter. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-5 was entitled: Definitions. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-7 was entitled: Which law shall govern; liability of partners; difference in laws not grounds to deny registration. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-9 was entitled: Registration. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-11 was entitled: Filing of application. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-13 was entitled: Name of partnership; required language; prohibited words. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-15 was entitled: Correction of application. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-17 was entitled: Cancellation of registration. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-19 was entitled: Effect of failure to register. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-21 was entitled: Activities of partnership not constituting transacting business in state; exceptions. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-23 was entitled: Attorney General may restrict transactions in violation of chapter. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-25 was entitled: Penalty for signing false document. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-27 was entitled: Agent for service of process on partnership. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-29 was entitled: Permissible activities of partnership. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-31 was entitled: Construction of terms and provisions of chapter. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-33 was entitled: Fees. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-35 was entitled: Powers of Secretary of State to implement chapter. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-37 was entitled: Tax classification of partnerships. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

Former § 79-31-39 was entitled: Severability of provisions of chapter. For current provisions relating to foreign limited liability partnerships, see §§ 79-13-1101 et seq.

CHAPTER 33

Corporate Successor Asbestos-Related Liability in Connection with Mergers or Consolidations

SEC.

- 79-33-1. Definitions.
- 79-33-3. Applicability.
- 79-33-5. Liabilities limited to fair market value of total gross assets at time of merger or consolidation; liabilities assumed or incurred in connection with prior merger or consolidation.
- 79-33-7. Establishment of fair market value of total gross assets.
- 79-33-9. Adjustments to fair market value of total gross assets.
- 79-33-11. Choice of law.

§ 79-33-1. Definitions.

The following words and phrases shall have the meanings ascribed herein, unless the context clearly indicates otherwise:

(a) “Asbestos claim” means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(i) Property damage caused by the installation, presence or removal of asbestos;

(ii) The health effects of exposure to asbestos, including any claim for:

1. Personal injury or death;
2. Mental or emotional injury;
3. Risk of disease or other injury; or
4. The costs of medical monitoring or surveillance; and

(iii) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child or other relative of the person.

(b) “Corporation” means a corporation for profit, including:

- (i) A domestic corporation organized under the laws of this state; or
- (ii) A foreign corporation organized under laws other than the laws of this state.

(c) “Successor asbestos-related liabilities” means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 79-33-7, were or are paid or otherwise discharged, or committed to be paid or

otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(d) "Successor" means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

(e) "Transferor" means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

SOURCES: Laws, 2004, ch. 353, § 1, eff from and after passage (approved Apr. 20, 2004.)

§ 79-33-3. Applicability.

(1) The limitations in Section 79-33-5 shall apply to the following:

(a) A domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state and who is or has done business in this state that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors but in the latter case only to the extent of the limitations of liability applied under Section 79-33-5(2);

(b) All asbestos claims, including asbestos claims that are pending on April 20, 2004, and all litigation involving asbestos claims, including litigation that is pending on April 20, 2004;

(c) Successors of a corporation to which this chapter applies.

(2) The limitations in Section 79-33-5 shall not apply to:

(a) Workers' compensation benefits paid by or on behalf of an employer to an employee under this state's workers' compensation act or a comparable workers' compensation law of another jurisdiction;

(b) Any claim against a corporation that does not constitute a successor asbestos-related liability;

(c) An insurance company, as that term is defined in Section 83-5-5; or

(d) Any obligations under the National Labor Relations Act (29 USCS Section 151 et seq.), as amended, or under any collective bargaining agreement.

SOURCES: Laws, 2004, ch. 353, § 2, eff from and after passage (approved Apr. 20, 2004.)

§ 79-33-5. Liabilities limited to fair market value of total gross assets at time of merger or consolidation; liabilities assumed or incurred in connection with prior merger or consolidation.

(1) Except as further limited in subsection (2) of this section, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any

responsibility for successor asbestos-related liabilities in excess of this limitation.

(2) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in subsection (1) of this section, for purposes of determining the limitation of liability of a corporation.

SOURCES: Laws, 2004, ch. 353, § 3, eff from and after passage (approved Apr. 20, 2004.)

§ 79-33-7. Establishment of fair market value of total gross assets.

(1) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under Section 79-33-5 through any method reasonable under the circumstances, including:

(a) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

(b) In the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet. A showing by the successor of a reasonable determination of fair market value of total assets if prima facie evidence of the fair market value of those assets.

(2) Total gross assets include intangible assets.

(3) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this title and which insurance has been collected or is collectable to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor before April 20, 2004, shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

(4) After a successor has established a reasonable determination of the fair market value of total assets under this title, a claimant that disputes that determination of the fair market value has the burden of establishing a different fair market value of those assets.

SOURCES: Laws, 2004, ch. 353, § 4, eff from and after passage (approved Apr. 20, 2004.)

§ 79-33-9. Adjustments to fair market value of total gross assets.

(1) Except as provided in subsections (2), (3) and (4) of this section, the fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(a) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first business day of the year may be used; and

(b) One percent (1%).

(2) The rate in subsection (1) of this section is not compounded.

(3) The adjustment of fair market value of total gross assets continues as provided under subsection (1) of this section until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(4) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of the total gross assets by Section 79-33-7(3).

SOURCES: Laws, 2004, ch. 353, § 5, eff from and after passage (approved Apr. 20, 2004.)

§ 79-33-11. Choice of law.

The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SOURCES: Laws, 2004, ch. 353, § 6, eff from and after passage (approved Apr. 20, 2004.)

Index

A

ACCOUNTANTS.

Corporations.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Limited liability companies.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional service defined to include services provided by accountants, §79-29-902.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional service defined to include services by accountants, §79-29-902.

ACCOUNTS AND ACCOUNTING.

Partnerships.

Dissolution and winding up.

Settlement of accounts and contributions among partners, §79-13-807.

Perpetual religious society trust funds, §79-11-47.

Professional fund-raisers, §79-11-515.

ACTIONS.

Agricultural associations.

Cooperative marketing associations.

Remedies for breach of marketing contract or bylaws, §79-19-33.

Incorporated associations, §79-17-29.

Commencement of actions.

Derivative proceedings.

Business corporations act, §§79-4-7.41, 79-4-7.42.

Corporations.

Appraisal rights of shareholders.

Court action to determine fair value of shares, §79-4-13.30.

Court costs and expenses, §79-4-13.31.

ACTIONS —Cont'd

Corporations —Cont'd

Bond necessary at commencement or during progress of case.

Execution by president or other authorized officer, agent or attorney, §79-1-11.

Defect or informality not defense to suit against corporation, §79-1-7.

Derivative proceedings, §§79-4-7.40 to 79-4-7.48.

Nonprofit corporations, §79-11-193.

Director liability for unlawful distribution.

Limitation of actions, §79-4-8.33.

Indemnification of directors, §§79-4-8.50 to 79-4-8.59.

Judicial dissolution, §§79-4-14.30 to 79-4-14.34.

Nonprofit corporations.

Challenge to corporation's power to act, §79-11-155.

Challenge to expulsion, suspension or termination of membership. Defective notice, limitation of actions, §79-11-189.

Creditor action to reach liability of member to corporation, §79-11-185.

Derivative proceedings, §79-11-193.

Indemnification of director, officer, employee or agent, §79-11-281.

Shareholder's proceeding to enjoin corporate power to act, §79-4-3.04.

Delegates.

Articles or bylaws providing for, §79-11-195.

Derivative proceedings.

Corporations, §§79-4-7.40 to 79-4-7.48.

Nonprofit corporations.

Proceedings brought on behalf of corporation, §79-11-193.

Limited liability companies, §§79-29-1101 to 79-29-1107.

Limited partnerships, §§79-14-1001 to 79-14-1004.

Dissolution of corporations.

Judicial dissolution, §§79-4-14.30 to 79-4-14.34.

ACTIONS —Cont'd

Distributions to shareholders.

Director liability for unlawful distribution.

Limitation of actions, §79-4-8.33.

Investment trusts.

Trust may sue or be sued as separate and distinct entity, §79-15-23.

Limited liability companies.

Derivative actions, §§79-29-1101 to 79-29-1107.

Indemnification of member, manager or other person made party to proceeding, §79-29-110.

Limited partnerships.

Derivative actions, §§79-14-1001 to 79-14-1004.

Members.

Delegates.

Articles or bylaws providing for delegates having same rights as members, §79-11-195.

Nonprofit corporations.

Challenge to corporation's power to act, §79-11-155.

Challenge to expulsion, suspension or termination of member.

Defective notice, limitation of actions, §79-11-189.

Creditor action to reach liability of member to corporation, §79-11-185.

Derivative proceedings.

Member bringing proceeding on behalf of corporation, §79-11-193.

Indemnification of director, officer, employee or agent, §79-11-281.

Member bringing proceeding on behalf of corporation, §79-11-193.

Partnerships.

Actions by and against partnership and partners, §79-13-307.

Actions by partnership and partners, §79-13-405.

Professional limited liability companies.

Compulsory acquisition of membership interest after death or disqualification of member.

Appraisal of membership interest, §§79-29-913, 79-29-914.

Unlawful distributions to shareholders.

Director liability.

Limitation of actions, §79-4-8.33.

ADMINISTRATIVE DISSOLUTION OF CORPORATIONS,

§§79-4-14.20 to 79-4-14.23.

Nonprofit corporations, §§79-11-347 to 79-11-353.

ADVERTISING.

Charitable solicitations.

Immunity of advertisers, §79-11-526.

AGENTS.

Corporations.

Nonprofit corporations.

Proxy appointed to act or vote for member, §79-11-221.

Acceptance or rejection of proxy appointment, §79-11-227.

Registered agent, §§79-11-375 to 79-11-381.

Foreign business trusts.

Registered agent, §§79-16-17 to 79-16-21.

Foreign corporations.

Nonprofit corporations.

Registered agent, §§79-11-375 to 79-11-381.

Foreign investment trusts.

Registered agents, §§79-15-115 to 79-15-119.

Limited liability companies.

Agency power of members or managers after dissolution, §79-29-804.

Members or managers with agency powers, §79-29-303.

Professional limited liability companies.

Proxy appointed to vote members interest, §79-29-917.

Registered agent, §79-29-106.

Nonprofit corporations.

Proxy appointed to act or vote for member, §79-11-221.

Acceptance or rejection of proxy appointment, §79-11-227.

Registered agent.

Foreign corporations, §§79-11-375 to 79-11-381.

Professional limited liability companies.

Proxy appointed to vote members interest, §79-29-917.

Proxies.

Executing without order or direction of court, §79-1-5.

Nonprofit corporations, §79-11-221.

Acceptance or rejection of proxy appointment, §79-11-227.

AGENTS —Cont'd

Proxies —Cont'd

- Professional limited liability companies.
- Appointing qualified person, §79-29-917.

Registered agents.

- Corporations.
 - Foreign corporations, §§79-4-15.07 to 79-4-15.10.
- Foreign business trusts, §§79-16-17 to 79-16-21.
- Foreign investment trusts, §§79-15-115 to 79-15-119.
- Limited liability companies, §79-29-106.
- Nonprofit corporations.
 - Foreign corporations, §§79-11-375 to 79-11-381.

AGRICULTURAL ASSOCIATIONS,
§§79-17-1 to 79-17-41.

Advancing money to members,
§79-17-25.

Agricultural association law,
§79-17-5.

Agricultural products defined,
§79-17-39.

Agriculture classified as primary industry, §79-17-1.

Articles of association and incorporation, §79-17-13.

Board of directors.
Control of affairs of association, §79-17-17.

Branch associations.
Organizing and operating, §79-17-25.

Bylaws.
Adoption at organizational meeting, §79-17-15.

Capital stock.
Organization of associations with, §79-17-23.

Charges for expenses and creating reserve, §79-17-27.

Control of affairs by board of directors, §79-17-17.

Conversion to corporate form,
§79-17-41.

Cooperative marketing associations,
§§79-19-1 to 79-19-63.

Distinctive names, §79-17-9.

Farm bureau.
Use of words unlawful in name, §79-17-11.

AGRICULTURAL ASSOCIATIONS
—Cont'd

Federation.

- Associations authorized to federate, §79-17-31.
- Managed by board of directors, organizational meeting, bylaws, etc., §79-17-33.
- Name, §79-17-9.
- Powers, §§79-17-25, 79-17-37.

Fee for recording article, §79-17-13.

Fees and dues for membership.

- Bylaws providing for, §79-17-19.

Formation, §79-17-13.

Incorporated associations.

- Actions by and against authorized, §79-17-29.
- Charges for expenses and creating reserve, §79-17-27.
- Conversion of association to corporate form, §79-17-41.
- Organization, §79-17-23.
- Powers, §79-17-25.

Membership personal to member,
§79-17-21.

Names, §79-17-9.
Use of farm bureau, when unlawful, §79-17-11.

Nontransferability, assignability, etc., of membership, §79-17-21.

Organizational meeting, §79-17-15.

Powers, §79-17-25.

Producers defined, §79-17-35.

Purposes of chapter, §79-17-7.

Secretary of state.

- Filing articles with, §79-17-13.

Stock, organization of associations with capital stock, §79-17-23.

Supplementary nature of provisions,
§79-17-3.

Voting by mail, §79-17-19.

AGRICULTURAL COOPERATIVE MARKETING ASSOCIATIONS,
§§79-19-1 to 79-19-63.

Activities engaged in by association,
§79-19-7.

Admission of members, §79-19-11.

Adoption of provisions of chapter by associations already organized,
§79-19-45.

Ad valorem tax exemption, §79-19-53.

Agent or representative of member.
Power to act as, §79-19-9.

Amendments to articles of association, §79-19-15.

**AGRICULTURAL COOPERATIVE
MARKETING ASSOCIATIONS**

—Cont'd

- Articles of association**, §79-19-13.
 - Amendment, §79-19-15.
 - Fees for filing, §79-19-55.
- Board of directors**, §79-19-21.
 - Calling special meetings, §79-19-19.
 - Removal of director, §79-19-27.
- Breach of contract or bylaws**, §79-19-33.
- Breach of marketing contracts or bylaws**.
 - Misdemeanor for breaching marketing contracts, §79-19-49.
- Bylaws**, §79-19-17.
 - Remedies for breach, §79-19-33.
- Central bank for co-operatives**.
 - Ownership of stock in bank, §79-19-63.
- Certificate of membership**, §79-19-25.
- Charges against officer or director, filing**, §79-19-27.
- Common stock**.
 - Limitation on stockholder ownership, §79-19-25.
- Common stock or certificate of membership, issuance**, §79-19-11.
- Conflicting laws not to apply**, §79-19-37.
- Contracts and agreements with other associations**, §79-19-43.
- Co-operative marketing law and cooperative livestock and poultry raising law**, §79-19-3.
- Damages**.
 - Recovering liquidated damages, §79-19-59.
- Declaration of policy**, §79-19-1.
- Definitions**, §79-19-3.
- Discharging obligations incurred when purchasing business of another association**, §79-19-35.
- Election of directors**, §79-19-21.
- Election of officers**, §79-19-23.
- Executive committee**, §79-19-21.
- Exemption from ad valorem taxes**, §79-19-53.
- Exemptions under laws to apply**, §79-19-37.
- Existing associations, adoption of provisions of chapter**, §79-19-45.
- False reports about finances or management**, §79-19-49.

**AGRICULTURAL COOPERATIVE
MARKETING ASSOCIATIONS**

—Cont'd

- Farm credit act of 1933**.
 - Acquiring and holding stock in production credit association in accordance with provisions, §79-19-63.
- Fees for filing articles of association**, §79-19-55.
- First meeting of persons at interest**.
 - Calling, notice, §79-19-11.
- Foreign organizations doing business in state**, §79-19-47.
- General meetings**, §79-19-19.
- Handling agricultural products of nonmembers**, §79-19-9.
- Interest in, owning stock or being member of another organization or corporation**, §79-19-41.
- Liability of members for debts**, §79-19-25.
- Limitation on use of term cooperative**, §79-19-39.
- Liquidated damages**.
 - Recovery by association, §79-19-59.
- Loan limitation**, §79-19-61.
- Management of affairs by board of directors**, §79-19-21.
- Marketing contracts**, §79-19-31.
 - Misdemeanor for breach, §79-19-49.
 - Remedies for breach, §79-19-33.
- Members**, §79-19-11.
 - Certificate of membership, §79-19-25.
 - Liability, §79-19-25.
 - Referendum on approval of action by board of directors, §79-19-29.
- New Orleans bank for co-operatives**.
 - Ownership of stock, §79-19-63.
- Nonmembers, handling products of**, §79-19-9.
- Nonprofit association, deemed**, §79-19-3.
- Number of persons who may organize**, §79-19-5.
- Officers**.
 - Election, §79-19-23.
 - Removal, §79-19-27.
- Organization generally**, §79-19-5.
- Other corporations or associations, interest in**, §79-19-41.
- Out-of-state organizations**.
 - Operating and doing business in state, §79-19-47.
- Petition for removal of officer or director**, §79-19-27.

**AGRICULTURAL COOPERATIVE
MARKETING ASSOCIATIONS**

—Cont'd

Powers, §79-19-9.

Preferred stock.

Limitation on stockholder ownership,
§79-19-25.

Redemption, §79-19-25.

**Presumption as to member's
products.**

Action upon marketing contract,
§79-19-33.

**Publication of notice of first meeting
of persons at interest**, §79-19-11.

**Purchasing business of another
association**, §79-19-35.

Purposes of chapter, §79-19-1.

Purposes of organization, §79-19-7.

Redemption of preferred stock,
§79-19-25.

**Referendum to membership on
matters approved by director**,
§79-19-29.

Removal of officer or director,
§79-19-27.

Replevin.

Liquidated damages recovered,
§79-19-59.

Maintenance by association, §79-19-57.

**Restraint of trade, associations not
deemed**, §79-19-51.

Secretary of state.

Articles of association, filing,
§79-19-13.

Amendment, §79-19-15.

Special meetings, §79-19-19.

Stock and stockholders.

Issuance on full payment, §79-19-25.

Limitation on number of shares owned
by stockholder, §79-19-25.

Voting, §79-19-25.

Use of term cooperative, limitation,
§79-19-39.

Vacancy on board of directors,
§79-19-21.

Voting of shares, §79-19-25.

Who may organize, §79-19-5.

AGRICULTURE.

Agricultural associations, §§79-17-1
to 79-17-41.

**Agricultural cooperative marketing
associations**, §§79-19-1 to 79-19-63.

Aquaculture act of 1988, §§79-22-1 to
79-22-35.

AGRICULTURE —Cont'd

**Classified as primary industry in
state**, §79-17-1.

Cooperative marketing associations,
§§79-19-1 to 79-19-63.

Fish farming.

Generally, §§79-22-1 to 79-22-35.

Primary industry in state, §79-17-1.

**AGRICULTURE AND COMMERCE
DEPARTMENT.**

Hybrid black stripe crappie.

Market feasibility study, §79-22-9.

Hybrid bream.

Market feasibility study, §79-22-9.

ALIENATION OF LAND.

Restraints on alienation.

Investment trust not deemed invalid
as violating, §79-15-21.

ALUMNI SOCIETIES.

**Regulation of charitable
solicitations.**

Exemption when solicitation made
solely by membership, §79-11-505.

AMENDMENT.

Articles of incorporation.

Corporations, §§79-4-10.01 to
79-4-10.09.

Nonprofit corporations, §§79-11-295 to
79-11-311.

Bylaws of corporation, §§79-4-10.20,
79-4-10.21.

Nonprofit corporations, §§79-11-313 to
79-11-317.

**ANNUAL REPORT BY
CORPORATIONS**, §§79-4-1.21,
79-4-16.22.

Professional corporations,
§79-10-101.

ANNUITIES.

Charitable gift annuities, §§79-11-651
to 79-11-661.

APPEALS.

Corporations.

Denial of reinstatement following
administrative dissolution,
§79-4-14.23.

Foreign corporations.

Denial of reinstatement of certificate
of authority after revocation,
§79-4-15.33.

Nonprofit corporations.

Denial of reinstatement after
administrative dissolution,
§79-11-353.

APPEALS —Cont'd

Corporations —Cont'd

Nonprofit corporations —Cont'd

Refusal by secretary of state to file document, §79-11-117.

Revocation of certificate of authority of foreign corporations, §79-11-389.

Secretary of state's refusal to file document, §79-4-1.26.

Foreign corporations.

Denial of reinstatement of certificate of authority after revocation, §79-4-15.33.

Nonprofit corporations.

Revocation of certificate of authority, §79-11-389.

Nonprofit corporations.

Denial of reinstatement after administrative dissolution, §79-11-353.

Refusal of secretary of state to file document, §79-11-117.

Revocation of certificate of authority of foreign corporations, §79-11-389.

APPOINTMENT OF PROXY.

Proxy to vote or otherwise act for shareholder, §79-4-7.22.

APPRAISALS AND APPRAISERS.

Professional corporations.

Compulsory acquisition of shares after death or disqualification of shareholder.

Court action to determine fair value, §§79-10-41, 79-10-43.

Professional limited liability companies.

Compulsory acquisition to purchase membership interest after death or disqualification of member.

Action to appraise membership interest, §§79-29-913, 79-29-914.

AQUACULTURE, §§79-22-1 to 79-22-35.

Applicability of provisions.

State educational institutions, §79-22-31.

Aquatic ventures center, §79-22-25.

Brood stock.

Permits for taking game fish for, §79-22-15.

Building requirements for cultivation permits, §79-22-17.

AQUACULTURE —Cont'd

Catfish farming industry.

Inapplicability of provisions to, §79-22-33.

Cooperative marketing associations.

Fresh and salt water cooperatives, §§79-21-51 to 79-21-67.

Generally, §§79-21-1 to 79-21-19.

Cultivation permits.

Building requirements, §79-22-17.

Game fish for brood stock, issuance, §79-22-15.

Nonrenewal, §79-22-13.

Required for cultured products, §79-22-9.

Withholding, §79-22-11.

Declaration of purpose, §79-22-3.

Definitions, §79-22-5.

Endangered, threatened or protected species.

Cultivation and marketing permits, §79-22-9.

Failure by aquaculturist to provide information required.

Nonrenewal, suspension or cancellation of permits, §79-22-13.

Fines for violations, §79-22-29.

Game fish.

Cultivation and marketing permits, §79-22-9.

Permits for taking game fish for brood stock, §79-22-15.

Genetically modified aquatic plants or animals.

Cultivation and marketing permits, §79-22-9.

Hybrid black stripe crappie.

Cultivation and marketing permits, §79-22-9.

Hybrid bream.

Cultivation and marketing permits, §79-22-9.

Issuance of order to stop sale or distribution, §79-22-27.

Leasing waters to person for aquaculture or production of aquatic products, §79-22-23.

Management plan to be developed by aquatic ventures center, §79-22-25.

Marketing permits, §79-22-7.

Game fish for brood stock, issuance, §79-22-15.

Nonrenewal, §79-22-13.

Required for cultured products, §79-22-9.

AQUACULTURE —Cont'd

Marketing permits —Cont'd

Withholding, §79-22-11.

Mississippi aquaculture act of 1988, §79-22-1.

Nonnative aquatic plants and animals.

Cultivation and marketing permits, §79-22-9.

One-stop permitting applicable to marine aquaculture activities, §79-22-23.

Order to stop sale or distribution.

Issuance by commissioner of agriculture and commerce, §79-22-27.

Prohibiting aquaculturing of species at any location, §79-22-11.

Purposes of provisions, §79-22-3.

Release of undesirable species from aquaculture facility, §79-22-15.

Remedies in law or equity for violations, §79-22-29.

State educational institutions.

Applicability of provisions, §79-22-31.

Tilapia products.

Offered for direct sale for human consumption.

Labeling, wrapping or container requirements, §79-22-35.

Wild brood stock collecting.

Taking game fish for brood stock, §79-22-15.

AQUATIC PRODUCTS MARKETING

ASSOCIATIONS, §§79-21-1 to 79-21-19.

Activities for which association organized, §79-21-11.

Admission of members, §79-21-15.

Agent or representative of member, acting as, §79-21-13.

Applicability of general cooperative marketing association laws, §79-21-19.

Articles of association, §79-21-17.

Common stock or certificate of membership, issuance, §79-21-15.

Construction of provisions, §79-21-7.

Cooperative aquatic products marketing law, §79-21-1.

Declaration of policy, §79-21-3.

Definitions, §79-21-5.

First meeting of persons at interest, §79-21-15.

AQUATIC PRODUCTS MARKETING

ASSOCIATIONS —Cont'd

Fresh and salt water cooperatives, §§79-21-51 to 79-21-67.

Activities for which association may be organized, §79-21-59.

Admission of members, §79-21-63.

Agent or representative of member, acting as, §79-21-61.

Applicability of general cooperative marketing association law, §79-21-67.

Articles of association, §79-21-65.

Common stock or certificate of membership, issuance, §79-21-63.

Construction of provisions, §79-21-55.

Declaration of policy, §79-21-51.

Definitions, §79-21-53.

General cooperative marketing association law, applicability, §79-21-67.

Handling products of nonmember, §79-21-61.

Members, §79-21-63.

Nonmembers, handling products for, §79-21-61.

Number of persons who may organize, §79-21-57.

Powers, §79-21-61.

Purposes for organizing, §79-21-59.

Purposes of provisions, §79-21-51.

Supplementary law, §79-21-55.

Who may organize, §79-21-57.

General cooperative marketing association laws to apply, §79-21-19.

Handling products of nonmember, §79-21-13.

Liability of members, §79-21-15.

Members, §79-21-15.

Nonmembers, handling products of, §79-21-13.

Notice of first meeting of persons at interest, publication, §79-21-15.

Number of persons who may organize, §79-21-9.

Powers, §79-21-13.

Purposes, §79-21-3.

Purposes of organization, §79-21-11.

Supplementary law, §79-21-7.

Who may organize, §79-21-9.

AQUATIC VENTURES CENTER, §79-22-25.

ARCHITECTS.

Corporations.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Limited liability companies.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional service defined to include services by architects, §79-29-902.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional service defined to include services by architects, §79-29-902.

ASBESTOS.

Corporate successor in connection with mergers and consolidations.

Asbestos-related liability, §§79-33-1 to 79-33-11.

Applicability of provisions, §79-33-3.

Assumed or incurred liabilities, §79-33-5.

Choice of law, §79-33-11.

Definitions, §79-33-1.

Fair market value of total gross assets, §§79-33-5 to 79-33-9.

Adjustments, §79-33-9.

Establishment, §79-33-7.

Liabilities limited, §79-33-5.

ASSIGNMENTS.

Limited liability company interest,

§79-29-702.

Right of assignee to become member, §79-29-704.

Partnerships.

Limited partnerships, §79-14-702.

Assignee's right to become limited partner, §79-14-704.

ASSOCIATIONS.

Agricultural cooperative marketing associations, §§79-19-1 to 79-19-63.

Commercial and proprietary information, §79-23-1.

Management of institutional funds.

Uniform act, §§79-11-601 to 79-11-617.

ASSOCIATIONS —Cont'd

Private foundations, §§79-11-51 to 79-11-61.

Religious societies, §§79-11-31 to 79-11-47.

Trade secrets, §79-23-1.

Uniform management of institutional funds act, §§79-11-601 to 79-11-617.

ATTORNEY GENERAL.

Charitable organizations soliciting funds in state.

Investigations, §79-11-521.

Charitable organizations violating provisions as to charitable solicitations.

Enjoining, issuing rescission, restitution or disgorgement, §79-11-509.

Corporations.

Judicial dissolution.

Proceeding by attorney general, §79-4-14.30.

Dissolution of corporations.

Judicial dissolution proceeding by attorney general, §79-4-14.30.

Foreign limited partnerships.

Restraining partnership from transacting business in state without registering, §79-14-908.

Nonprofit corporations.

Challenge to corporation's power to act, §79-11-155.

Dissolution by court order, §79-11-355.

Injunctive relief.

Commencement of proceedings authorized by attorney general but commenced by another, §79-11-133.

Intervention in proceeding.

Commencement of proceedings authorized to be brought by attorney general but commenced by another, §79-11-133.

Notice of commencement of proceedings authorized to be commenced by attorney general but commenced by another, §79-11-133.

Professional corporations.

Commencing proceeding to dissolve, §79-10-85.

Professional limited liability companies.

Commencing proceeding to dissolve, §79-29-923.

ATTORNEYS AT LAW.

Corporations.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Limited liability companies.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional service defined to include service by attorney, §79-29-902.

ATTORNEYS' FEES.

Derivative proceedings, §79-4-7.46.

Limited partnerships, §79-14-1004.

Indemnification.

Corporate directors, officers, employees or agents, §§79-4-8.50 to 79-4-8.59.

Limited liability companies, §79-29-110.

Nonprofit corporations.

Directors, officers, employees or agents, §79-11-281.

Inspection of records by shareholders, court order, §79-4-16.04.

Limited partnerships.

Derivative actions, §79-14-1004.

Professional corporations.

Compulsory acquisition of shares after death or disqualification of shareholder.

Court action to determine fair value, §79-10-43.

AUDITS AND AUDITORS.

Perpetual religious society trust funds, §79-11-47.

B

BANKRUPTCY AND INSOLVENCY.

Partnerships.

Actions by and against partnership and partners, §79-13-307.

Events causing partner's disassociation, §79-13-601.

BOND ISSUES.

Agricultural associations, issuance, §79-17-25.

BONDS, SURETY.

Agricultural cooperative marketing associations.

Action for breach of marketing contract or bylaws, §79-19-33.

Corporations.

Execution of bond necessary at commencement or during progress of case, §79-1-11.

Fund-raising counsel, §79-11-513.

Professional fund-raiser, §79-11-513.

BRANCH AGRICULTURAL ASSOCIATIONS.

Power of association to organize and operate, §79-17-25.

BREACH OF CONTRACT.

Marketing contracts.

Agricultural cooperative marketing associations, §79-19-33.

BREAM.

Hybrid bream.

Issuance of cultivation and marketing permits, §79-22-9.

BUSINESS CORPORATIONS.

General provisions, §§79-1-1 to 79-4-17.04.

BUSINESS ENTITIES.

Corporations.

Nonprofit corporations, §§79-11-101 to 79-11-403.

Professional corporations, §§79-10-1 to 79-10-117.

Foreign business trusts, §§79-16-1 to 79-16-35.

General provisions, §§79-1-1 to 79-4-17.04.

Investment trusts.

Foreign investment trusts, §§79-15-101 to 79-15-139.

Generally, §§79-15-1 to 79-15-29.

Limited liability companies.

Generally, §§79-29-101 to 79-29-1204.

Limited partnerships, §§79-14-101 to 79-14-1107.

Nonprofit corporations, §§79-11-101 to 79-11-403.

Partnerships.

Foreign limited liability partnerships, §§79-13-1101 to 79-13-1105.

BUSINESS ENTITIES —Cont'd

Partnerships —Cont'd

- Limited liability partnerships,
§§79-13-1001, 79-13-1002.
- Limited partnerships, §§79-14-101 to
79-14-1107.
- Uniform partnership act (1997),
§§79-13-101 to 79-13-1206.

**Professional corporations, §§79-10-1
to 79-10-117.**

**Professional limited liability
companies, §§79-29-901 to
79-29-933.**

**Small business investment
companies, §§79-7-1 to 79-7-7.**

BUSINESS TRUSTS.

Foreign business trusts.

- Certificate of authority generally,
§§79-16-1 to 79-16-35.

Investment trusts.

- Foreign investment trusts,
§§79-15-101 to 79-15-139.
- Generally, §§79-15-1 to 79-15-29.

BYLAWS.

**Agricultural associations, §79-17-15.
Federation, §79-17-33.**

**Agricultural cooperative marketing
associations, §79-19-17.
Remedies for breach, §79-19-33.**

Corporations.

- Amendments, §§79-4-10.20, 79-4-10.21.

**Nonprofit corporations, §§79-11-145,
79-11-147.**

- Amendment, §§79-11-313 to 79-11-317.

C

CAMPGROUNDS.

**Religious societies, ecclesiastical
bodies or congregations.
Power to own, §79-11-33.**

CAPITAL STOCK.

**Agricultural associations.
Incorporated associations organized
with capital stock, §79-17-23.**

CATFISH.

**Aquaculture act provisions.
Inapplicability, §79-22-33.**

CEASE AND DESIST ORDERS.

Charitable solicitation.

- Secretary of state, power to issue,
§79-11-509.

CERTIFICATES OF AUTHORITY.

Foreign business trusts.

- Generally, §§79-16-1 to 79-16-35.

**Foreign corporations, §§79-4-15.01 to
79-4-15.10.**

- Nonprofit corporations, §§79-11-363 to
79-11-389.

- Professional corporations, §§79-10-91
to 79-10-95.

Foreign investment trusts.

- Generally, §§79-15-101 to 79-15-139.

**Foreign limited liability companies,
§§79-29-1001 to 79-29-1010.**

- Professional limited liability
companies, §§79-29-924 to
79-29-926.

CERTIFICATES OF DEPOSIT.

Shareholder protection act.

- Equity security, defined, §79-25-3.

CERTIFICATES OF FORMATION.

**Limited liability companies,
§§79-29-201 to 79-29-209.**

CERTIFICATES OF LIMITED

**PARTNERSHIP, §§79-14-201 to
79-14-211.**

**CHALLENGING CORPORATION'S
POWER TO ACT, §79-4-3.04.**

CHANCERY COURTS.

Appeals to chancery court.

Corporations.

- Denial of reinstatement following
administrative dissolution,
§79-4-14.23.

Dissolution of corporations.

- Denial of reinstatement following
administrative dissolution,
§79-4-14.23.

- Judicial dissolution, §§79-4-14.30 to
79-4-14.34.

Foreign corporations.

- Denial of reinstatement of certificate
of authority after revocation,
§79-4-15.33.

Nonprofit corporations.

- Denial of reinstatement after
administrative dissolution,
§79-11-353.

- Revocation of certificate of authority
by foreign corporation,
§79-11-389.

- Secretary of state's refusal to file
document, §79-11-117.

- Secretary of state's refusal to file
document, §79-4-1.26.

CHANCERY COURTS —Cont'd
Corporations.

- Appeal from denial of reinstatement following administrative dissolution, §79-4-14.23.
- Appeal from secretary of state's refusal to file document, §79-4-1.26.
- Claims against dissolved corporation.
 - Determining security for payment. Contingent and unknown claims, §79-4-14.08.
- Foreign corporations.
 - Appeal of denial of reinstatement of certificate of authority after revocation, §79-4-15.33.
- Inspection of list of shareholders by shareholder.
 - Summary order of inspection, §79-4-7.20.
- Inspection of records by directors, ordering, §79-4-16.05.
- Inspection of records by shareholders, ordering, §79-4-16.04.
- Judicial dissolution, §§79-4-14.30 to 79-4-14.34.
- Nonprofit corporations.
 - Appeal of denial of reinstatement after administrative dissolution, §79-11-353.
 - Appeal of revocation of certificate of authority by foreign corporation, §79-11-389.
 - Appeal of secretary of state's refusal to file document, §79-11-117.
 - Dissolution by court order, §§79-11-355 to 79-11-361.
 - Inspection of list of members, ordering, §79-11-213.
 - Inspection of records by members, court ordering, §79-11-289.
 - Ordering meeting of members, §79-11-201.
 - Petition to court for alternative method for calling or conducting meeting, §79-11-131.
 - Removal of director, §79-11-249.
 - Removal of director, §79-4-8.09.
- Director of corporation, removal,** §79-4-8.09.
- Dissolution of corporations.**
 - Appeal from denial of reinstatement following administrative dissolution, §79-4-14.23.
 - Judicial dissolution, §§79-4-14.30 to 79-4-14.34.

CHANCERY COURTS —Cont'd
Foreign corporations.

- Appeal from denial of reinstatement of certificate of authority after revocation, §79-4-15.33.
- Nonprofit corporations.
 - Appeal of revocation of certificate of authority, §79-11-389.
- Inspection of corporate records by directors, ordering,** §79-4-16.05.
- Inspection of records by shareholders, ordering,** §79-4-16.04.
- Limited liability companies.**
 - Enforcement of limited liability agreement, §79-29-306.
 - Ordering dissolution, §79-29-802.
 - Professional limited liability companies.
 - Compulsory acquisition of membership interest after death or disqualification of member. Action to appraise membership interest, §§79-29-913, 79-29-914.
- Limited partnerships.**
 - Ordering dissolution, §79-14-802.
 - Ordering execution of required certificate, §79-14-205.
 - Winding up affairs, §79-14-803.
- Nonprofit corporations.**
 - Appeal of denial for reinstatement after administrative dissolution, §79-11-353.
 - Appeal of revocation of certificate of authority by foreign corporation, §79-11-389.
 - Appeal of secretary of state's refusal to file document, §79-11-117.
 - Dissolution by court order, §§79-11-355 to 79-11-361.
 - Inspection of list of members, ordering, §79-11-213.
 - Inspection of records by members, court ordering, §79-11-289.
 - Ordering meeting of members, §79-11-201.
 - Petition to court for alternative method for calling or conducting meeting, §79-11-131.
 - Removal of director, §79-11-249.
- Professional corporations.**
 - Compulsory acquisition of shares after death or disqualification of shareholder. Proceeding to determine fair value of shares, §79-10-41.

CHANCERY COURTS —Cont'd

Professional limited liability companies.

Compulsory acquisition of membership interest after death or disqualification of member.

Action to appraise membership interest, §§79-29-913, 79-29-914.

Religious societies.

Perpetual religious society trust funds.

Accounting and reporting, §79-11-47.

Jurisdiction to administer, §79-11-45.

Removal of director of corporation, §79-4-8.09.

CHANGE OF ADDRESS.

Limited partnerships.

Registered agent for service of process.

Certificate filed with secretary, §79-14-104.

CHARITABLE GIFT ANNUITIES,

§§79-11-651 to 79-11-661.

Definitions, §79-11-651.

Disclosures to donor upon issuance, §79-11-655.

Enforcement of notice requirements, §79-11-659.

Failure to provide required notice, §79-11-659.

Issuance not engaging in insurance, §79-11-653.

Notice to donor upon issuance, §79-11-655.

Notice to secretary of state on issuance, §79-11-657.

Not unfair or deceptive trade practice, §79-11-661.

CHARITABLE NONPROFIT FOUNDATION.

Conduct of private foundations generally, §§79-11-51 to 79-11-61.

CHARITABLE ORGANIZATIONS.

Charitable gift annuities, §§79-11-651 to 79-11-661.

Criminal penalties for violations, §79-11-529.

Donations.

Regulation of solicitations to charities generally, §§79-11-501 to 79-11-529.

Gifts to charities.

Charitable gift annuities, §§79-11-651 to 79-11-661.

CHARITABLE ORGANIZATIONS

—Cont'd

Gifts to charities —Cont'd

Regulation of charitable solicitations generally, §§79-11-501 to 79-11-529.

Management of institutional funds.

Uniform act, §§79-11-601 to 79-11-617.

Nonprofit corporations.

Donations for charitable purposes, §79-11-151.

Private foundations, §§79-11-51 to 79-11-61.

Solicitations.

Regulation generally, §§79-11-501 to 79-11-529.

Uniform management of institutional funds, §§79-11-601 to 79-11-617.

CHARITABLE SOLICITATIONS,

§§79-11-501 to 79-11-529.

Administrative penalty issued by secretary of state, §79-11-509.

Advertisers.

Immunity, §79-11-526.

Cease and desist orders.

Issuance by secretary of state, §79-11-509.

Certificate of registration.

Issuance to charitable organizations, §79-11-503.

Charitable organization.

Defined, §79-11-501.

Charitable purpose.

Defined, §79-11-501.

Citation for violations, §79-11-509.

Civil penalty imposed on persons engaging in violation, §79-11-509.

Confidentiality of information in possession of or filed with or obtained by secretary of state, §79-11-527.

Confusingly similar names, use, §79-11-519.

Contracts between professional fund-raisers or fund-raising counsel in charitable organization.

Requirements, §79-11-515.

Contribution.

Defined, §79-11-501.

County prosecuting attorneys to prosecute, §79-11-519.

Definitions, §79-11-501.

CHARITABLE SOLICITATIONS

—Cont'd

- Denial, suspension or revocation of registration or exemption,** §79-11-509.
- Disclosure requirements,** §79-11-523.
- District attorney's duty to prosecute,** §79-11-519.
- Effective date of registration of charitable organizations,** §79-11-509.
- Enjoining acts or practices constituting violation,** §79-11-509.
- Events.**
 - Immunity, §79-11-526.
- Exemptions from provisions,** §79-11-505.
 - Grounds for denying, suspending or revoking, §79-11-509.
- Expenditure of unreasonable amount of money for solicitation or management,** §79-11-519.
- Exploiting registration,** §79-11-519.
- False or misleading statements in solicitations,** §79-11-519.
- False pretense,** §79-11-519.
- Fee for renewal of registration,** §79-11-503.
- Fiduciary responsibility of person soliciting, collecting or expending contributions,** §79-11-525.
- Financial reports for charitable organizations,** §79-11-507.
- Financial transactions not related to charitable purpose,** §79-11-519.
- Fraud,** §79-11-519.
- Fund-raising counsel.**
 - Annual report, §79-11-513.
 - Bond, §79-11-513.
 - Contract with charitable organization.
 - Requirements, filing with secretary of state, §79-11-515.
 - Defined, §79-11-501.
 - Registration, §79-11-513.
- Grounds for denying, suspending or revoking registration or exemption,** §79-11-509.
- Immunity,** §79-11-526.
- Individuals, solicitations for.**
 - Exemptions from provisions, §79-11-505.
- Investigations by attorney general,** §79-11-521.
- Methods of solicitation,** §79-11-501.

CHARITABLE SOLICITATIONS

—Cont'd

- Misrepresentation as to association with charitable organization,** §79-11-519.
- Misrepresenting purpose or beneficiary of solicitation,** §79-11-519.
- Misrepresenting purpose or nature of charitable organization,** §79-11-519.
- Misrepresenting that other persons sponsors or endorses solicitation,** §79-11-519.
- Nonprofit corporations,** §79-11-151.
- Nonrenewal of registration, final report,** §79-11-503.
- Notice of exemption to be filed prior to solicitation,** §79-11-505.
- Oral solicitations.**
 - Disclosures, §79-11-523.
- Out of state organizations.**
 - Subject to service of process by designating registered agent, §79-11-511.
- Performing services on behalf of unregistered organization,** §79-11-519.
- Professional fund-raisers.**
 - Accounting of contributions.
 - Furnished secretary of state, §79-11-515.
 - Annual report, §79-11-513.
 - Bond, §79-11-513.
 - Contract with charitable organization.
 - Requirements, filing with secretary of state, §79-11-515.
 - Defined, §79-11-501.
 - Deposit of amount of contributions, §79-11-515.
 - Disclosure of name before solicitation, §79-11-523.
 - Recordkeeping requirements, §79-11-515.
 - Registration, §79-11-513.
 - Report to secretary of state on solicitation campaign, §79-11-515.
 - Violations, §79-11-519.
- Professional solicitor defined,** §79-11-501.
- Professional solicitor employed by professional fund-raiser.**
 - Defined, §79-11-501.
 - Disclosure requirements prior to soliciting contributions, §79-11-523.

CHARITABLE SOLICITATIONS

—Cont'd

Professional solicitor employed by professional fund-raiser —Cont'd
Registration, §79-11-517.

Public access to registration records, §79-11-527.

Public safety organization.

Defined, §79-11-501.

Violations as to solicitations for, §79-11-519.

Reciprocal agreements with other states, §79-11-527.

Records of solicitation activities, §79-11-518.

Registration statements.

Filing prior to solicitation, §79-11-503.

Information to be contained, §79-11-503.

Religious institutions not included in definition of charitable organization, §79-11-501.

Remedies of secretary of state.

Charitable organization engaging in act or practice constituting violation, §79-11-509.

Renewal of registration, §79-11-503.

Report by organization to secretary of state, §79-11-507.

Rescission, restitution or disgorgement directed to person engaging in violation, §79-11-509.

Sanctions imposed by secretary of state.

Charitable organization engaging in act or practice constituting violation, §79-11-509.

Secretary of state, §§79-11-504, 79-11-505.

Service of process on out of state organizations, §79-11-511.

Solicitation.

Defined, §79-11-501.

Sponsors.

Immunity, §79-11-526.

Telephone solicitations.

Disclosures, §79-11-523.

Restrictions on hours, §79-11-524.

Term of registration, §79-11-503.

Unfair or deceptive acts or practices, §79-11-519.

Unlawful use of name or emblem of charitable organization, §79-11-519.

Violations, §79-11-519.

Criminal penalties, §79-11-529.

CHARITABLE SOLICITATIONS

—Cont'd

Words or conduct or failure to disclose constituting misrepresentation, §79-11-519.

CHARTERS.

Corporations.

Extension of expired fifty-year charters, §79-1-1.

Extension of expired fifty-year charters, §79-1-1.

CHILD CARE FACILITIES.

Religious society, ecclesiastical body or congregation's power to own, §79-11-33.

CHOICE OF LAW.

Corporations.

Asbestos-related liability, corporate successor in connection with mergers and consolidations, §79-33-11.

CHURCHES AND OTHER PLACES OF WORSHIP.

Perpetual religious society trust funds.

Establishment, purposes, audit, §§79-11-41 to 79-11-47.

Religious organizations generally, §§79-11-31 to 79-11-47.

CIVIL RIGHTS.

Corporation interfering with employees' rights, §79-1-9.

CLAIMS AGAINST DISSOLVED CORPORATIONS.

Nonprofit corporations, §§79-11-343, 79-11-345.

Voluntary dissolution, §§79-4-14.06 to 79-4-14.09.

COLLEGES AND UNIVERSITIES.

Religious societies, ecclesiastical bodies or congregations.

Power to own buildings used by college or seminary, §79-11-33.

COMMENCEMENT OF ACTIONS.

Derivative proceedings.

Business corporations act, §§79-4-7.41, 79-4-7.42.

COMMERCIAL FISHING.

Cooperative marketing associations.

Fresh and salt water cooperatives, §§79-21-51 to 79-21-67.

Generally, §§79-21-1 to 79-21-19.

**COMMERCIAL USE OF
MEMBERSHIP LISTS.**

Nonprofit corporations, restrictions,
§79-11-291.

COMPLAINTS.

Limited partnerships.

Derivative actions, §79-14-1003.

**CONFIDENTIALITY OF
INFORMATION.**

**Charitable organizations soliciting
funds in state.**

Investigation or examination
information received by secretary
of state, §79-11-527.

**Commercial and financial
information of proprietary
nature,** §79-23-1.

Professional corporations.

Confidential relationship between
individual rendering services and
client or patient, §79-10-63.

**Professional limited liability
companies.**

Confidential relationship between
individual rendering services and
client or patient, §79-29-918.

Trade secrets, §79-23-1.

CONFLICT OF LAWS.

Derivative proceedings.

Foreign corporation involved in
proceeding, §79-4-7.47.

Foreign limited liability companies.

Law governing, §79-29-1001.

Foreign limited partnerships.

Laws governing, §79-14-901.

Limited liability companies.

Foreign limited liability companies.
Law governing, §79-29-1001.

Limited partnerships.

Foreign limited partnerships.
Laws governing, §79-14-901.

Partnerships.

Foreign limited liability partnerships,
§79-13-1101.

CONFLICTS OF INTEREST.

Corporate directors.

Conflicting transactions generally,
§§79-4-8.60 to 79-4-8.63.

Nonprofit corporations.

Conflicting interest transaction of
director, §79-11-269.

Standards of liability, §79-4-8.31.

Nonprofit corporations.

Conflicting interest transaction of
director, §79-11-269.

CONSENT.

Corporations.

Directors action without meeting,
§79-4-8.21.

Nonprofit corporations.

Action by members without holding
meeting, §79-11-203.

Action taken by directors without
meeting, §79-11-257.

Nonprofit corporations.

Action by members without holding
meeting, §79-11-203.

Action taken by directors without
meeting, §79-11-257.

**Release of restriction on gift
instrument.**

Governing board of institutional fund
obtaining, §79-11-613.

CONSERVATORS.

Limited partnerships.

Power of conservator to exercise rights
of incompetent partner,
§79-14-705.

CONTAINERS.

**Tilapia products sold for human
consumption,** §79-22-35.

CONTRACTS.

**Agricultural cooperative marketing
associations.**

Contracts and agreements with other
associations, §79-19-43.

Marketing contracts, §79-19-31.

Misdemeanor for breach, §79-19-49.

Remedies for breach, §79-19-33.

**Charitable organization contracting
with professional fund-raiser or
fund-raising counsel,** §79-11-515.

Fund-raising counsel.

Contract between fund-raisers and
charitable organization,
§79-11-515.

Marketing contracts.

Agricultural cooperative marketing
associations, §§79-19-31, 79-19-33.

Professional fund-raisers.

Contracts between fund-raisers and
charitable organization,
§79-11-515.

Specific performance.

Professional corporations.

Compulsory acquisition of shares
after death or disqualification of
shareholder, §79-10-37.

CONTRIBUTIONS.

Charitable solicitations.

Regulation generally, §§79-11-501 to 79-11-529.

Corporations.

Power to make, §79-1-3.

Distributions to shareholders.

Director liability for unlawful distribution, §79-4-8.33.

Unlawful distributions to shareholders.

Director liability, §79-4-8.33.

CONTROL SHARES.

Voting, acquisition, §§79-27-1 to 79-27-11.

CONVERSION OF AGRICULTURAL ASSOCIATION TO CORPORATE FORM, §79-17-41.

CONVEYANCES.

Religious societies.

Number of members required to divest or encumber real property, §79-11-31.

COOPERATIVE AQUATIC PRODUCTS MARKETING LAW.

Fresh and salt water cooperatives, §§79-21-51 to 79-21-67.

Generally, §§79-21-1 to 79-21-19.

COOPERATIVE ASSOCIATIONS.

Agricultural associations, §§79-17-1 to 79-17-41.

Agricultural cooperative marketing associations, §§79-19-1 to 79-19-63.

Aquatic products marketing associations.

Fresh and salt water cooperatives, §§79-21-51 to 79-21-67.

Generally, §§79-21-1 to 79-21-19.

CORPORATION FRANCHISE TAX.

Investment trusts.

Deemed domestic corporation for purposes of, §79-15-25.

CORPORATIONS.

Accounting records to be maintained, §79-4-16.01.

Acquisition of control shares, §§79-27-1 to 79-27-11.

Action against director for unlawful distribution.

Limitation of action, §79-4-8.33.

Actions against corporations.

Defect or informality in organization not defense, §79-1-7.

CORPORATIONS —Cont'd

Actions against corporations

—Cont'd

Interference with social, civil and political rights of employees, §79-1-9.

Shareholder's proceeding to enjoin corporation power to act, §79-4-3.04.

Voluntary dissolution, §79-4-14.31.

Actions in the right of corporation.

Derivative proceedings, §§79-4-7.40 to 79-4-7.48.

Actions taken without meeting of shareholders, §79-4-7.04.

Administrative dissolution,

§§79-4-14.20 to 79-4-14.23.

Nonprofit corporations, §§79-11-347 to 79-11-353.

Agents.

Registered agent, §§79-4-5.01 to 79-4-5.04.

Foreign corporations, §§79-4-15.07 to 79-4-15.10.

Foreign nonprofit corporations, §§79-11-375 to 79-11-381.

Nonprofit corporations, §§79-11-163 to 79-11-169.

Agricultural associations.

Generally, §§79-17-1 to 79-17-41.

Amendment of articles of

incorporation, §§79-4-10.01 to 79-4-10.09.

Nonprofit corporations, §§79-11-295 to 79-11-311.

Fee, §79-11-109.

Amendment of business corporation act.

Reservation of power by Mississippi legislature, §79-4-1.02.

Amendment of bylaws, §§79-4-10.20, 79-4-10.21.

Annual meeting of shareholders, §79-4-7.01.

Annual report, §§79-4-1.21, 79-4-16.22.

Professional corporations, §79-10-101.

Appeals.

Denial of reinstatement following administrative dissolution, §79-4-14.23.

Secretary of state's refusal to file document, §79-4-1.26.

Applicability of provisions, §79-1-31.

Applicability of provisions to existing corporations, §79-4-17.01.

CORPORATIONS —Cont'd

Appointment of proxy to vote shares or otherwise act for shareholder, §79-4-7.22.

Aquatic products marketing associations.

Fresh and salt water co-operatives, §§79-21-51 to 79-21-67.

Generally, §§79-21-1 to 79-21-19.

Articles of amendment, §79-4-10.06.

Corporation's acquisition of own shares without shareholder action, §79-4-6.31.

Fee for filing, §79-4-1.22.

Filing for issuing shares of class or series, §79-4-6.02.

Articles of correction.

Correcting filed document, §79-4-1.24.

Articles of dissolution.

Voluntary dissolution, §79-4-14.03.

Incorporators or initial directors dissolving prior to commencing business, §79-4-14.01.

Articles of incorporation.

Amendment of articles, §§79-4-10.01 to 79-4-10.09.

Articles of amendments, §79-4-10.06.

Authority to amend, §79-4-10.01.

Before issuance of shares, §79-4-10.05.

Board of directors amending, §79-4-10.02.

Board of directors and shareholders amending, §79-4-10.03.

Effect of amendment, §79-4-10.09.

Existing causes of action not affected, §79-4-10.09.

Filing articles of amendment with secretary of state, §79-4-10.06.

Filing restated articles with secretary of state, §79-4-10.07.

Nonprofit corporations, §§79-11-295 to 79-11-311.

Preferred stock issued by public utility subject to public utility holding company act.

Voting groups not entitled to vote on amendment, §79-4-10.04.

Reorganization, amendment pursuant to, §79-4-10.08.

Restated articles of incorporation, §79-4-10.07.

Voting groups, voting on amendment, §79-4-10.04.

CORPORATIONS —Cont'd

Articles of incorporation —Cont'd

Articles of amendment.

Corporation's acquisition of own shares without shareholder action, §79-4-6.31.

Fee for filing, §79-4-1.22.

Filing before issuing shares of class or series, §79-4-6.02.

Classes of shares and number of shares prescribed, §79-4-6.01.

Defined, §79-4-1.40.

Existence begin when articles filed, §79-4-2.03.

Fees for filing, §79-4-1.22.

Filing of documents generally, §§79-4-1.20 to 79-4-1.29.

Information required to be set forth, §79-4-2.02.

Information that may be set forth, §79-4-2.02.

Nonprofit corporations, §§79-11-137, 79-11-139.

Amendment, §§79-11-295 to 79-11-311.

Powers need not be enumerated, §79-4-2.02.

Record to be kept in principal office, §79-4-16.01.

Restated articles of incorporation, §79-4-10.07.

Fee for filing, §79-4-1.22.

Satisfaction of conditions precedent to incorporation, filing conclusive proof, §79-4-2.03.

Shareholder has no vested property right resulting from provisions, §79-4-10.01.

Shareholders preemptive rights, providing for, §79-4-6.30.

Articles of merger or share exchange, §79-4-11.06.

Fee for filing, §79-4-1.22.

Articles of revocation of dissolution, §79-4-14.04.

Asbestos-related liability, corporate successor in connection with mergers and consolidations, §§79-33-1 to 79-33-11.

Applicability of provisions, §79-33-3.

Assumed or incurred liabilities, §79-33-5.

Choice of law, §79-33-11.

Definitions, §79-33-1.

Fair market value of total gross assets, §§79-33-5 to 79-33-9.

Adjustments, §79-33-9.

CORPORATIONS —Cont'd

Asbestos-related liability, corporate successor in connection with mergers and consolidations —Cont'd

Fair market value of total gross assets —Cont'd

Establishment, §79-33-7.

Liabilities limited, §79-33-5.

Assets.

Appraisal rights of shareholders, §§79-4-13.01 to 79-4-13.31.

Disposition of assets.

Not requiring shareholder approval, §79-4-12.01.

Requiring shareholder approval, §79-4-12.02.

Attorney general.

Challenging corporation power to act, §79-4-3.04.

Authorized shares, §79-4-6.01.

Beginning of corporate existence, §79-4-2.02.

Beneficial owner of shares recognized as shareholder.

Shares registered in name of nominee, §79-4-7.23.

Best interest of corporation.

Derivative proceedings, determination, §79-4-7.44.

Duty of director to act, §79-4-8.30.

Duty of officer to act, §79-4-8.42.

Board of directors.

Acquisition of corporation's own shares without shareholder action, §79-4-6.31.

Action without meeting, §79-4-8.21.

Amending or repealing bylaws, §79-4-10.20.

Amendment of articles of incorporation.

By directors without shareholder action, §79-4-10.02.

By directors with shareholder action, §79-4-10.03.

Best interest of corporation, acting in manner reasonably believing, §79-4-8.30.

Business and affairs of corporation managed under direction, §79-4-8.01.

Business opportunities.

Conflicts of interest, §79-4-8.70.

Call for payment by board, §79-4-6.20.

Classes of shares electing specified number, §79-4-8.04.

CORPORATIONS —Cont'd

Board of directors —Cont'd

Committees, §79-4-8.25.

Compensation fixed by directors, §79-4-8.11.

Conflicts of interest, §§79-4-8.60 to 79-4-8.63.

Affirmative vote of majority of directors, effectiveness of director's action, §79-4-8.62.

Business opportunities, §79-4-8.70.

Definitions, §79-4-8.60.

Disclosure requirements, §79-4-8.62.

Effectiveness of director's action, §79-4-8.62.

Liability of directors, §79-4-8.31.

Qualified director defined, §79-4-1.43.

Shareholder approval, §79-4-8.63.

When actions not sanctionable, §79-4-8.61.

Consent to action without meeting, §79-4-8.21.

Consideration for shares, determining, §79-4-6.21.

Continuance to serve until successor elected or qualified, §79-4-8.05.

Contribution, entitlement of director liable for unlawful distribution, §79-4-8.33.

Corporate powers exercised by or under authority of, §79-4-8.01.

Cumulative voting for directors, §79-4-7.28.

Distributions to shareholders, §79-4-6.40.

Liability, §79-4-8.33.

Due care, duty of, §79-4-8.30.

Duties, §79-4-8.30.

Election at annual meeting, §§79-4-7.01, 79-4-8.03.

Election of specified number of directors by classes of shares, §79-4-8.04.

Expiration of term, §79-4-8.05.

Filling vacancies, §79-4-8.10.

Good faith, duties, §§79-4-8.30, 79-4-8.31.

Increasing or decreasing number, §79-4-8.03.

Indemnification, §§79-4-8.50 to 79-4-8.59.

Actions which may be indemnified, §79-4-8.51.

Advancing funds before final disposition of proceedings, §79-4-8.53.

CORPORATIONS —Cont'd

Board of directors —Cont'd

Indemnification —Cont'd

- Applicability of article, §79-4-8.58.
- Authority to indemnify, §79-4-8.51.
- Authorization for advancing funds, §79-4-8.53.
- Authorization of indemnification and evaluation of reasonableness of expenses, §79-4-8.55.
- Conduct for which director may be indemnified, §79-4-8.51.
- Controlling effect of provisions, §79-4-8.59.
- Court ordered indemnification, §79-4-8.54.
- Definitions, §79-4-8.50.
- Determination as to indemnification, §79-4-8.55.
- Mandatory indemnification, §79-4-8.52.
- Successful defense of proceeding, mandatory indemnification, §79-4-8.52.
- Initial directors, §79-4-2.05.
- Inspection of records, §79-4-16.05.
- Insurance purchased on behalf of, §79-4-8.57.
- Issuance of shares, authorizing, §79-4-6.21.
- Issuance of shares without certificates, §79-4-6.26.
- Liability of directors, §79-4-8.31.
- Unlawful distributions, §79-4-8.33.
- Limitation of action on liability for unlawful distribution, §79-4-8.33.
- Meetings, §79-4-8.20.
- Action without meeting, §79-4-8.21.
- Conducting meeting through use of any means of communication, §79-4-8.20.
- Minutes of meetings, permanent records, §79-4-16.01.
- Minutes prepared by designated officer, §79-4-8.40.
- Notice, §79-4-8.22.
- Waiver, §79-4-8.23.
- Participation of directors, §79-4-8.20.
- Quorum and voting, §79-4-8.24.
- Waiver of notice, §79-4-8.23.
- Nonprofit corporations, §§79-11-231 to 79-11-270.
- Notice of resignation, §79-4-8.07.
- Number, §79-4-8.03.
- Payment terms of subscription, determining, §79-4-6.20.

CORPORATIONS —Cont'd

Board of directors —Cont'd

- Preferences, limitations and relative rights of classes of shares.
- Determining if articles of incorporation provides, §79-4-6.02.
- Qualifications, §79-4-8.02.
- Quorum, §79-4-8.24.
- Removal by judicial proceedings, §79-4-8.09.
- Removal by shareholder, §79-4-8.08.
- Required, §79-4-8.01.
- Resident of state or shareholder of corporation.
- Required only if articles of incorporation or bylaws prescribe, §79-4-8.02.
- Resignation, §79-4-8.07.
- Scrip, authorizing issuance, §79-4-6.04.
- Staggered terms, §§79-4-8.03, 79-4-8.06.
- Standards, §79-4-8.30.
- Terms, §79-4-8.05.
- Staggered terms, §§79-4-8.03, 79-4-8.06.
- Unlawful distributions, liability, §79-4-8.33.
- Vacancies, §79-4-8.10.
- Voluntary dissolution by board.
- Submission of proposal to shareholders, §79-4-14.02.
- Voting, §79-4-8.24.
- Voting by shareholders for directors.
- Cumulative voting, §79-4-7.28.
- Bonds, surety.**
- Actions.
- Execution by president or other officer, agent or attorney, §79-1-11.
- Business opportunities.**
- Conflicting interest transactions of directors, §79-4-8.70.
- Business subject to regulation under another statute.**
- Incorporation under business corporation act, §79-4-3.01.
- Bylaws, §§79-4-2.06, 79-4-2.07.**
- Amendment, §§79-4-10.20, 79-4-10.21.
- Board of directors amending or repealing, §79-4-10.20.
- Increasing quorum or voting requirements for shareholders, §79-4-10.21.

CORPORATIONS —Cont'd

Bylaws —Cont'd

Amendment —Cont'd

Shareholders amending or repealing,
§79-4-10.20.

Nonprofit corporations, §§79-11-145,
79-11-147.

Amendment, §§79-11-313 to
79-11-317.

Record to be kept in principal office,
§79-4-16.01.

Certificate of existence.

Application.

Form prescribed and furnished by
secretary of state upon request,
§79-4-1.21.

**Challenging corporation power to
act, §79-4-3.04.**

**Charitable, scientific, religious or
educational gifts or
contributions.**

Power to make, §79-1-3.

Charters.

Extension of expired fifty-year
charters, §79-1-1.

**Claims against corporation on
dissolution, §§79-4-14.06 to
79-4-14.09.**

Known claims, §79-4-14.06.

Payment of claims and distribution of
assets, §79-4-14.09.

Security for payment of contingent or
unknown claims.

Chancery court determination,
§79-4-14.08.

Unknown claims, §79-4-14.07.

**Commercial and proprietary
information, §79-23-1.**

Committees.

Creation by directors, §79-4-8.25.

Communicating notice, §79-4-1.41.

**Compelling secretary of state's filing
of document, §79-4-1.26.**

**Conflicting interest transactions of
directors, §§79-4-8.60 to 79-4-8.63.**

Actions not sanctionable, §79-4-8.61.

Business opportunities, §79-4-8.70.

Definitions, §79-4-8.60.

Disclosure requirement, §79-4-8.62.

Effectiveness of director's action,
§79-4-8.62.

Majority vote of qualified directors.

Effectiveness of director's action,
§79-4-8.62.

Qualified director defined, §79-4-1.43.

CORPORATIONS —Cont'd

**Conflicting interest transactions of
directors —Cont'd**

Shareholder approval, §79-4-8.63.

Standards of liability, §79-4-8.31.

Consideration for shares, §79-4-6.21.

Consolidation.

Asbestos-related liability, corporate
successor in connection with
mergers and consolidations,
§§79-33-1 to 79-33-11.

Shareholder protection on business
combination.

Voting requirements, §§79-25-1 to
79-25-9.

Contributions or gifts.

Power to make, §79-1-3.

Control shares, §§79-27-1 to 79-27-11.

Acquisition of shares when corporation
not subject to chapter, §79-27-11.

Applicability to issuing public
corporation, §79-27-3.

Corporation not subject to chapter,
acquisition of shares, §79-27-11.

Definitions, §79-27-5.

Disclosure when making control share
acquisition, §79-27-9.

Election by corporation not issuing
public corporation, §79-27-3.

Mississippi control share act, §79-27-1.

Notice of special meeting to consider
acquisition, §79-27-9.

Publication of disclosure.

Person making control share
acquisition, §79-27-9.

Special meeting of shareholders of
issuing public corporation.

Consideration of control share
acquisition, §79-27-9.

Voting for resolution contained in
disclosure statement on
acquisition, §79-27-9.

Voting power, §79-27-7.

Copies of filed documents.

Evidentiary effect, §79-4-1.27.

Fees, §79-4-1.22.

Correcting filed document.

Articles of correction, §79-4-1.24.

**Court-ordered meeting of
shareholders, §79-4-7.03.**

**Cumulative voting for board of
directors, §79-4-7.28.**

Nonprofit corporations, §79-11-223.

**Deadlocked directors or
shareholders.**

Grounds for judicial dissolution,
§79-4-14.30.

CORPORATIONS —Cont'd

Defect or informality in

organization not defense, §79-1-7.

Definitions, §79-4-1.40.

Asbestos-related liability, corporate successor in connection with mergers and consolidations, §79-33-1.

Conflicting interest transaction of directors, §79-4-8.60.

Control share, §79-27-5.

Derivative proceedings, §79-4-7.40.

Filing documents, §79-4-1.20.

Shareholder protection, §79-25-3.

Delayed effective time and date for filed documents, §79-4-1.23.

Derivative proceedings, §§79-4-7.40 to 79-4-7.48.

Beneficial owner included in definition of shareholder, §79-4-7.40.

Best interest of corporation determination, §79-4-7.44.

Commencement of proceeding after determination rejecting demand by stockholder, §79-4-7.44.

Commencement of proceeding by shareholder, §79-4-7.41.

Custodian.

Shareholder action to appoint, §79-4-7.48.

Defined, §79-4-7.40.

Demand upon corporation, prerequisite, §79-4-7.42.

Discontinuance or settlement, court approval, §79-4-7.45.

Dismissal when proceeding not in best interest of corporation, §79-4-7.44.

Expenses and attorneys' fees, §79-4-7.46.

Independent directors determining whether proceeding in best interest of corporation, §79-4-7.44.

Inquiry into allegations by corporation, stay, §79-4-7.43.

Panel of independent persons determining whether proceeding in best interest of corporation, §79-4-7.44.

Qualified director, defined, §79-4-7.43.

Receiver.

Shareholder action to appoint, §79-4-7.48.

Shareholder defined, §79-4-7.40.

Shareholder may commence or maintain proceeding, §79-4-7.41.

CORPORATIONS —Cont'd

Derivative proceedings —Cont'd

Stay upon inquiry into allegations by corporation, §79-4-7.43.

Written demand upon corporation, prerequisite, §79-4-7.42.

Disposition of assets.

Appraisal rights of shareholders, §§79-4-13.01 to 79-4-13.31.

Not requiring shareholder approval, §79-4-12.01.

Requiring shareholder approval, §79-4-12.02.

Dissolution, §§79-4-14.01 to 79-4-14.40.

Administrative dissolution, §§79-4-14.20 to 79-4-14.23.

Appeal from denial of reinstatement, §79-4-14.23.

Commencement of proceeding by secretary of state, §79-4-14.20.

Continuance in existence to wind up and liquidate, §79-4-14.21.

Failure to correct grounds for dissolution within time period, §79-4-14.21.

Grounds for commencing proceeding, §79-4-14.20.

Nonprofit corporations, §§79-11-347 to 79-11-353.

Registered agent's authority not terminated, §79-4-14.21.

Reinstatement following dissolution, §79-4-14.22.

Appeal from denial, §79-4-14.23.

Service of notice of denial of reinstatement, §79-4-14.23.

Service of notice that grounds exist for administrative dissolution, §79-4-14.21.

Time limit for applying for reinstatement following dissolution, §79-4-14.22.

Assets reduced to cash and deposited with state treasurer for safekeeping.

Creditors, claimants or shareholders not found, §79-4-14.40.

Assets vested in stockholders, §79-1-17.

Judicial dissolution, §§79-4-14.30 to 79-4-14.34.

Attorney general, grounds for proceeding by, §79-4-14.30.

Avoiding dissolution by electing to purchase petitioner's shares, §79-4-14.34.

Notice, §79-4-14.31.

INDEX

CORPORATIONS —Cont'd

Dissolution —Cont'd

Judicial dissolution —Cont'd

- Bond of receiver or custodian,
§79-4-14.32.
- Court authority, §79-4-14.31.
- Creditors, grounds for proceeding
by, §79-4-14.30.
- Custodian, appointing, §79-4-14.32.
- Decree, §79-4-14.33.
- Election to purchase petitioner's
shares, avoiding dissolution,
§79-4-14.34.
- Notice of entitlement, §79-4-14.31.
- Fair value of shares, determination.
 - Election to purchase petitioner's
shares to avoid dissolution,
§79-4-14.34.
- Grounds, §79-4-14.30.
- Nonprofit corporations, §§79-11-355
to 79-11-361.
- Notice of entitlement to avoid
dissolution by electing to
purchase petitioner's shares,
§79-4-14.31.
- Procedure, §79-4-14.31.
- Professional corporations, §79-10-85.
- Purchase of petitioner's shares to
avoid dissolution, §79-4-14.34.
 - Notice, §79-4-14.31.
- Receivers to wind up and liquidate,
appointing, §79-4-14.32.
- Shareholder, grounds for proceeding
by, §79-4-14.30.
- Venue, §79-4-14.31.
- Voluntary dissolution continued
under supervision of court,
§79-4-14.30.
- Winding up and liquidation directed
after decree, §79-4-14.33.
- Nonprofit corporations, §§79-11-333 to
79-11-361.
- Payment of assets to creditor, claimant
or shareholder.
 - Satisfaction proof of entitlement,
§79-4-14.40.
- Professional corporations.
 - Judicial dissolution, §79-10-85.
- Voluntary dissolution, §§79-4-14.01 to
79-4-14.09.
 - Articles of dissolution, §79-4-14.03.
 - Dissolution by incorporators or
initial directors before
commencing business,
§79-4-14.01.

CORPORATIONS —Cont'd

Dissolution —Cont'd

Voluntary dissolution —Cont'd

- Articles of revocation of dissolution,
§79-4-14.04.
- Bar of claim against corporation.
 - Failure to submit within time
limits, §§79-4-14.06,
79-4-14.07.
- Before commencing business or
issuing shares, §79-4-14.01.
- Board of directors proposing and
submitting to shareholders,
§79-4-14.02.
- Claims against corporation,
§§79-4-14.06 to 79-4-14.09.
 - Disposition of known claims,
§79-4-14.06.
 - Disposition of unknown claims,
§79-4-14.07.
- Payment and distribution of
assets, §79-4-14.09.
- Security for contingent or
unknown claims,
determination, §79-4-14.08.
- Continuance in business to wind up
and liquidate, §79-4-14.05.
- Dissolve corporation defined,
§79-4-14.03.
- Effect, §79-4-14.05.
- Incorporators, dissolution by,
§79-4-14.01.
- Initial directors, dissolution by,
§79-4-14.01.
- Known claims against corporation,
disposition, §79-4-14.06.
- Nonprofit corporations, §§79-11-333
to 79-11-345.
- Notice to known claimants in
writing, §79-4-14.06.
- Notice to unknown claimants,
publication, §79-4-14.07.
- Payment of claims and distribution
of assets, §79-4-14.09.
- Publication of notice and request to
present claims, §79-4-14.07.
- Revocation of dissolution,
§79-4-14.04.
- Unknown claims against
corporation, disposition,
§79-4-14.07.
- Winding up and liquidating.
 - Continuance in business,
§79-4-14.05.
- Distributions, §79-4-6.40.**
 - Authorization for making, §79-11-293.

CORPORATIONS —Cont'd

Distributions —Cont'd

- Unlawful distributions, director liability, §79-4-8.33.
- Contribution of director liable, §79-4-8.33.
- Limitation of action, §79-4-8.33.

Dividends.

- Distributions to shareholders, §79-4-6.40.
- Unlawful distributions, director liability, §79-4-8.33.
- Share dividends, §79-4-6.23.

Doing all things necessary or convenient to carry out business, §79-4-3.02.

Duty of care, officers, §79-4-8.42.

Effective time and date of filed documents, §79-4-1.23.

Effective time and date of notice, §79-4-1.41.

Election to purchase petitioner's shares to avoid dissolution, §79-4-14.34.

Electronic transmission, notice by, §79-4-1.41.

Emergency bylaws, §79-4-2.07.

Emergency powers, §79-4-3.03.

Employees.

- Indemnification, §79-4-8.56.
- Insurance purchased on behalf of, §79-4-8.57.
- Interference with social, civil and political rights, §79-1-9.

Enjoining corporate acts.

- Proceedings by shareholders, §79-4-3.04.

Escrow of shares.

- Contract for future services or benefits or promissory note, §79-4-6.21.

Evidentiary effect of copy of filed document, §79-4-1.27.

Exchange of all or substantially all property.

- Nonprofit corporations.
 - In regular course of business, §79-11-329.
 - Not in regular course of business, §79-11-331.

Execution of documents to be filed with secretary of state, §79-4-1.20.

Existing corporations.

- Applicability of provisions to, §79-4-17.01.

CORPORATIONS —Cont'd

Expedited filing of documents, §79-4-1.22.

Expenses of selling or underwriting shares, §79-4-6.28.

Extension of expired fifty-year charters, §79-1-1.

Fair value of shares.

- Election to purchase petitioner's shares to avoid judicial dissolution, §79-4-14.34.

Fees.

- Copying and certifying copy of filed documents, §79-4-1.22.
- Discounts to encourage online filing, §79-4-1.22.
- Expedited filing of documents, §79-4-1.22.
- Filing of documents, §79-4-1.22.
- Service of process on secretary of state, §79-4-1.22.

Fiduciaries.

- Execution of proxies without order or direction of court, §79-1-5.

Filing documents.

- Appeal from secretary of state's refusal to file document, §79-4-1.26.
- Articles of correction, §79-4-1.24.
- Attestation, acknowledgment or verification not necessary, §79-4-1.20.
- Certificate of existence or certificate of authorization, §79-4-1.28.
- Copies of filed documents, conclusive evidence, §79-4-1.27.
- Copying or certifying copy, fees, §79-4-1.22.
- Copy of document delivered by secretary of state, §79-4-1.25.
- Corporate seal not necessary, §79-4-1.20.
- Correcting document filed by secretary of state, §79-4-1.24.
- Criminal penalty for signing false document, §79-4-1.29.
- Delayed effective time and date, documents specifying, §79-4-1.23.
- Delivery to office of secretary of state for filing, requirements, §79-4-1.20.
- Duties of secretary of state of documents satisfy requirements, §79-4-1.25.
- Effective date of document accepted for filing, §79-4-1.23.

CORPORATIONS —Cont'd

Filing documents —Cont'd

- Electronic transmission, delivery of document made by, §79-4-1.20.
- Electronic transmitted documents, format, §79-4-1.20.
- English language, §79-4-1.20.
- Evidentiary effect of copy of filed document, §79-4-1.27.
- Execution generally, §79-4-1.20.
- Expedited filing, §79-4-1.22.
- False documents, penalty for signing, §79-4-1.29.
- Fee schedule, §79-4-1.22.
- Forms prescribed and furnished on request by secretary of state, §79-4-1.21.
- Mandatory use of forms, secretary of state requiring, §79-4-1.21.
- Ministerial, secretary of state duty to file document, §79-4-1.25.
- Nonprofit corporations, §§79-11-105 to 79-11-123.
- Refusal to file document.
 - Appeal from secretary of state's refusal, §79-4-1.26.
 - Return by secretary of state, §79-4-1.25.
- Requirements generally, §79-4-1.20.
- Return of documents refused by secretary of state, §79-4-1.25.
- Signing by person executing, §79-4-1.20.
- Signing false document, criminal penalty, §79-4-1.29.
- Terms dependent upon facts outside of plan or filed documents, §79-4-1.20.
- Typewritten or printed documents, §79-4-1.20.

Financial statements for shareholders, §79-4-16.20.

Forms for documents to be filed with secretary of state.

- Secretary prescribing and furnishing, §79-4-1.21.

Fractional shares, §79-4-6.04.

Franchise sold to satisfy judgment, §79-1-13.

- Redemption by stockholders at time of sale, §79-1-15.

General powers, §79-4-3.02.

- Nonprofit corporations, §79-11-151.

Gifts, donations or contributions.

- Power to make, §79-1-3.

CORPORATIONS —Cont'd

Good faith, duty of officer, §79-4-8.42.

Illegal, oppressive or fraudulent acts.

- Grounds for judicial dissolution, §79-4-14.30.

Incorporators.

- Organizational meetings, §79-4-2.05.
- Persons acting as, §79-4-2.01.

Indemnification of directors.

- Advancing expenses, §79-4-8.53.
- Authority of corporation to indemnify, §79-4-8.51.
- Authorization and evaluation of expenses, §79-4-8.55.
- Conduct for which director may be indemnified, §79-4-8.51.
- Controlling effect of provisions, §79-4-8.59.
- Court ordered indemnification, §79-4-8.54.
- Definitions, §79-4-8.50.
- Determination of indemnification, §79-4-8.55.
- Further indemnity, power of corporation, §79-4-8.58.
- Mandatory indemnification, §79-4-8.52.
- Nonprofit corporations, §79-11-281.

Indemnification of officers, employees or agents, §79-4-8.56.

- Nonprofit corporations, §79-11-281.

Inspection of list of shareholders by shareholder, §79-4-7.20.

Inspection of records by directors, §79-4-16.05.

Inspection of records by shareholders.

- Abolishing or limiting right in articles of incorporation or bylaws, §79-4-16.02.
- Agent or attorney has same inspection rights, §79-4-16.03.
- Costs of court order for inspection, payment, §79-4-16.04.
- Court-ordered inspection, §79-4-16.04.
- Entitlement, §79-4-16.02.
- Reasonable charge for copying records, §79-4-16.03.
- Requirements for inspecting, §79-4-16.02.
- Scope, §79-4-16.03.

Insurance purchased on behalf of director, officer, employee or agent, §79-4-8.57.

CORPORATIONS —Cont'd

Interference with social, civil and political rights of employees, §79-1-9.

Irrevocable appointment of proxy to vote shares or act for shareholder, §79-4-7.22.

Joint and several liability for acts prior to incorporation, §79-4-2.04.

Judgment rendered against corporation.
Selling property and franchise of corporation to satisfy, §79-1-13.
Redemption of franchise by stockholders at time of sale, §79-1-15.

Judicial dissolution, §§79-4-14.30 to 79-4-14.34.
Nonprofit corporations, §§79-11-355 to 79-11-361.

Lease of all or substantially all property.
Nonprofit corporations.
In regular course of business, §79-11-329.
Not in regular course of business, §79-11-331.

Liability insurance for directors, officers, employees or agents, §79-4-8.57.

Liability of shareholders, §79-4-6.22.

Limitation of action against director for unlawful distribution, §79-4-8.33.

Limitation of action on claim against corporation.
Voluntary dissolution, §§79-4-14.06, 79-4-14.07.

Limitations on distributions to shareholders, §79-4-6.40.

Limited liability companies.
Generally, §§79-29-101 to 79-29-1204.

Limited partnerships.
Corporation as partner in limited partnership.
Exercise of rights upon dissolution or termination of corporation, §79-14-705.

List of shareholders entitled to notice of meeting, §79-4-7.20.

Managing the business.
Bylaws making may contain provisions, §79-4-2.06.

Meetings of directors, §§79-4-8.20 to 79-4-8.25.

CORPORATIONS —Cont'd

Meetings of members of nonprofit corporations, §§79-11-197 to 79-11-229.

Meetings of shareholders, §§79-4-7.01 to 79-4-7.08.
Actions without meeting, §79-4-7.04.
Adjournment of meeting to different date, time or place.
Notice requirement, §79-4-7.05.
Annual meeting, §79-4-7.01.
Notice, §79-4-7.05.
Attendance at meeting waives lack of notice objection, §79-4-7.06.
Chair to preside, appointment, §79-4-7.08.
Closing of polls for matters voted upon, chair to announce, §79-4-7.08.
Consent to action without meeting, §79-4-7.04.
Control share acquisition.
Special meeting, §79-27-9.
Court-ordered meetings, §79-4-7.03.
List of shareholders entitled to notice, §79-4-7.20.
Minutes of meetings, permanent record, §79-4-16.01.
Minutes prepared by designated officer, §79-4-8.40.
Notice of meeting, §79-4-7.05.
List of shareholders entitled, §79-4-7.20.
Record date for determining shareholders entitled, §79-4-7.07.
Waiver, §79-4-7.06.
Notice to nonvoting shareholders of action to be taken without meeting, §79-4-7.04.
Order of business, chair determine, §79-4-7.08.

Quorum.
Bylaw amendment increasing quorum or voting requirements, §79-4-10.21.
Record date for determining shareholders entitled to notice, §§79-4-7.05, 79-4-7.07.
Rules adopted and conduct of meetings to be fair, §79-4-7.08.
Special meetings, §79-4-7.02.
Control share acquisition, §79-27-9.
Notice, §79-4-7.05.
Waiver of notice of meeting, §79-4-7.06.

CORPORATIONS —Cont'd

- Merger**, §79-4-11.02.
 - Abandonment, §79-4-11.08.
 - Appraisal rights of shareholders, §§79-4-13.01 to 79-4-13.31.
 - Articles of merger, §79-4-11.06.
 - Fee for filing, §79-4-1.22.
 - Asbestos-related liability, corporate successor in connection with mergers and consolidations, §§79-33-1 to 79-33-11.
 - Definitions, §79-4-11.01.
 - Effect, §79-4-11.07.
 - Nonprofit corporations, §§79-11-319 to 79-11-327.
 - Plan of merger, §79-4-11.02.
 - Action on plan, §79-4-11.04.
 - Professional corporations, §79-10-81.
 - Shareholder protection on business combination.
 - Voting requirements, §§79-25-1 to 79-25-9.
 - Subsidiaries, §79-4-11.05.
- Mississippi business corporation act**, §79-4-1.01.
- Name**, §79-4-4.01.
 - Authorization to use name not distinguishable upon records.
 - Application to secretary of state, §79-4-4.01.
 - Distinguishable upon records of secretary of state, §79-4-4.01.
 - Fees for filing documents, §79-4-1.22.
 - Fictitious name, use, §79-4-4.01.
 - Business corporation act not to control, §79-4-4.01.
 - Reservation of corporate name including fictitious name for foreign corporation, §79-4-4.02.
 - Foreign corporations, §79-4-15.06.
 - Registering corporate name, §79-4-4.03.
 - Nonprofit corporations, §§79-11-157 to 79-11-161.
 - Reservation of exclusive use of corporate name, §79-4-4.02.
 - Fees for filing documents, §79-4-1.22.
 - Foreign corporations, §79-4-4.03.
- Nominee holding shares for beneficial owner.**
 - Recognition of beneficial owner as shareholder, §79-4-7.23.
- Nonprofit corporations**, §§79-11-101 to 79-11-403.

CORPORATIONS —Cont'd

- Notice of directors meetings**, §79-4-8.22.
 - Waiver, §79-4-8.23.
- Notice of meeting of shareholders**, §79-4-7.05.
 - Record date for determining shareholders entitled to notice, §79-4-7.07.
 - Waiver of notice, §79-4-7.06.
- Notice required to be given to shareholder.**
 - Exception to requirement, §79-4-16.06.
- Notice under business corporation act, requirements**, §79-4-1.41.
 - Shareholders sharing common address, §79-4-1.44.
- Office.**
 - Registered office, §§79-4-5.01, 79-4-5.02.
 - Foreign corporations, §§79-4-15.07, 79-4-15.08.
 - Foreign nonprofit corporations, §§79-11-375, 79-11-377.
 - Nonprofit corporations, §§79-11-163, 79-11-165.
- Officers**, §§79-4-8.40 to 79-4-8.44.
 - Best interest of corporation, acting in, §79-4-8.42.
 - Contract rights not created by appointment, §79-4-8.44.
 - Duties, §79-4-8.41.
 - Duty of care as ordinary prudent person, §79-4-8.42.
 - Good faith, duty of, §79-4-8.42.
 - Standards of conduct, §79-4-8.42.
 - Holding more than one office, §79-4-8.40.
 - Indemnification, §79-4-8.56.
 - Insurance purchased on behalf of, §79-4-8.57.
 - Minutes of directors and shareholders meetings.
 - Delegation to officer responsibility for preparing, §79-4-8.40.
 - Nonprofit corporations, §§79-11-271 to 79-11-279.
 - Performance of duties, §79-4-8.41.
 - Removal, §79-4-8.43.
 - Contract rights with corporation not affected, §79-4-8.44.
 - Required, §79-4-8.40.
 - Resignation, §79-4-8.43.
 - Contract rights with corporation not affected, §79-4-8.44.

CORPORATIONS —Cont'd

Officers —Cont'd

Standards of conduct, §79-4-8.42.

Oral notice, §79-4-1.41.

Organization.

After incorporation, §79-4-2.05.

Organizational meeting of
incorporators, §79-4-2.05.

Outstanding shares, §79-4-6.03.

**Perpetual duration and succession
in corporate name**, §79-4-3.02.

Personal liability of shareholders,
§79-4-6.22.

**Petition to compel secretary of state
filing of document**, §79-4-1.26.

Powers.

Emergency powers, §79-4-3.03.

General power, §79-4-3.02.

Nonprofit corporations, §79-11-151.

Ultra vires, §79-4-3.04.

**Preemptive rights to acquire
unissued shares.**

Shareholders rights, §79-4-6.30.

Preincorporation liability, §79-4-2.04.

Professional corporations, §§79-10-1
to 79-10-117.

**Professional limited liability
companies.**

Generally, §§79-29-901 to 79-29-933.

**Property and franchise sold to
satisfy judgment**, §79-1-13.

Redemption of franchise by
stockholders at time of sale,
§79-1-15.

Proxies.

Appointment of proxy to vote or
otherwise act for shareholder,
§79-4-7.22.

Execution by fiduciary without order
or direction of court, §79-1-5.

Nonprofit corporation members,
§79-11-221.

Shareholder voting shares by,
§79-4-7.22.

Prudent persons.

Duty of director to act with care as
ordinary prudent person,
§79-4-8.30.

**Publication in newspaper,
communicating notice by**,
§79-4-1.41.

Public corporation.

Defined, §79-4-1.40.

**Purchase of petitioner's shares to
avoid dissolution**, §79-4-14.34.

CORPORATIONS —Cont'd

**Purpose of corporation incorporated
under business corporation act**,
§79-4-2.01.

**Recognition of beneficial owner of
shares as shareholder.**

Shares registered in name of nominee,
§79-4-7.23.

**Record date for determining
shareholders entitled to
distribution**, §79-4-6.40.

**Record date for determining
shareholders entitled to notice
of meeting**, §79-4-7.07.

Records, §79-4-16.01.

Inspection by stockholders,
§§79-4-16.02 to 79-4-16.04.

Nonprofit corporations, §79-11-283.

Inspection by members, §§79-11-285
to 79-11-289.

Redeemable shares.

Not entitled to vote after notice of
redemption mailed, §79-4-7.21.

**Redemption of franchise sold to
satisfy judgment**, §79-1-15.

**Refusal of secretary to file
document**, §79-4-1.25.

Appeal from secretary of state's
refusal, §79-4-1.26.

Registered agent, §79-4-5.01.

Change, §79-4-5.02.

Corporate agent for service of process,
notice or demand, §79-4-5.04.

Foreign corporations, §§79-4-15.07 to
79-4-15.10.

Nonprofit corporations, §§79-11-163 to
79-11-169.

Foreign corporations, §§79-11-375 to
79-11-381.

Resignations, §79-4-5.03.

Registered office, §79-4-5.01.

Change, §79-4-5.02.

Foreign corporations, §§79-4-15.07,
79-4-15.08.

Nonprofit corporations, §§79-11-163,
79-11-165.

Foreign corporations, §§79-11-375,
79-11-377.

**Registration of name by foreign
corporation**, §79-4-4.03.

Fees for filing documents, §79-4-1.22.

Regulating affairs of corporations.

Bylaws may contain provisions,
§79-4-2.06.

CORPORATIONS —Cont'd

Reinstatement following

administrative dissolution,
§79-4-14.22.

Appeal from denial of reinstatement,
§79-4-14.23.

Religious corporations.

Applicability of nonprofit corporations
act, §79-11-401.

Provisions inapplicable to,
§79-11-403.

Religious doctrine control,
§79-11-403.

Reorganization.

Amendment of articles of incorporation
pursuant to plan of
reorganization, §79-4-10.08.

Repeal of business corporation act.

Reservation of power by legislature,
§79-4-1.02.

**Repeal of statutes, savings
provisions, §79-4-17.03.**

Reports.

Annual report for secretary of state,
§79-4-16.22.

Professional corporations,
§79-10-101.

Financial statements for shareholders,
§79-4-16.20.

Indemnification or advance of
expenses to director, §79-4-16.21.

Issuance of shares for promissory note
or promise to render services,
§79-4-16.21.

**Reservation of exclusive use of
corporate name, §79-4-4.02.**

Fees for filing documents, §79-4-1.22.

Foreign corporations, §79-4-4.03.

**Reservation of power to amend or
repeal business corporation act,
§79-4-1.02.**

**Resignation of registered agent,
§79-4-5.03.**

**Restated articles of incorporation,
§79-4-10.07.**

Fee for filing, §79-4-1.22.

**Restriction on transfer or
registration of transferred
shares and other securities,
§79-4-6.27.**

**Revocable appointment of proxy to
vote shares or act for
shareholder, §79-4-7.22.**

**Revocation of dissolution,
§79-4-14.04.**

CORPORATIONS —Cont'd

**Rural waterworks corporations,
§§79-11-393, 79-11-394.**

Savings provisions, §79-4-17.03.

**Scrip in registered or bearer form,
issuing, §79-4-6.04.**

Secretary of state.

Administrative dissolution of
corporations, §§79-4-14.20 to
79-4-14.23.

Annual report for secretary,
§79-4-16.22.

Articles of amendment, filing with
secretary, §79-4-10.06.

Before issuing shares of class or
series, §79-4-6.02.

Articles of dissolution filed with
secretary.

Voluntary dissolution, §§79-4-14.01,
79-4-14.03.

Articles of revocation of dissolution
filed with secretary, §79-4-14.04.

Certificate of authority, foreign
corporation delivering to
secretary, §79-4-15.03.

Amended certificate, §79-4-15.04.

Certificate of withdrawal for foreign
corporation, §79-4-15.20.

Change of registered office or
registered agent.

Filing statement of change with
secretary, §79-4-5.02.

Foreign corporations, §79-4-15.08.

Duty of secretary when document filed
in office, §79-4-1.25.

Fees for filing service and copying,
§79-4-1.22.

Filing documents with generally,
§§79-4-1.20 to 79-4-1.29.

Powers reasonably necessary to
perform duties, §79-4-1.30.

Reinstatement of foreign corporation's
certificate of authority after
revocation, §79-4-15.32.

Resignation of registered agent, filing
statement with secretary.

Foreign corporations, §79-4-15.09.

Service of process on secretary.

Fee collected by secretary,
§79-4-1.22.

Revocation of certificate of authority
of foreign corporation,
§79-4-15.31.

Statement of resignation of registered
agent.

Filing with secretary, §79-4-5.03.

CORPORATIONS —Cont'd

Selling property and franchise to satisfy judgment, §79-1-13.

Redemption of franchise by stockholders at time of sale, §79-1-15.

Service of process.

Communicating notice generally, §79-4-1.41.

Foreign corporations, §79-4-15.10.

Revocation of certificate of authority.

Service of process on secretary of state, §79-4-15.31.

Withdrawal from state, §79-4-15.20.

Nonprofit corporations, §79-11-169.

Foreign corporations, §79-11-381.

No registered agent or agent not reasonably serviced, §79-4-5.04.

Perfected service, §79-4-5.04.

Registered agent.

Corporation's agent for service of process, notice or demand, §79-4-5.04.

Secretary of state as agent for service.

Fee collected, §79-4-1.22.

Severability of provisions,

§79-4-17.01.

Small business investment

companies, §§79-7-1 to 79-7-7.

Statement of change of registered office or registered agent.

Filing with secretary of state, §79-4-5.02.

Statement of resignation of registered agent.

Filing with secretary of state, §79-4-5.03.

Statute of limitations.

Against director for unlawful distribution, §79-4-8.33.

Voluntary dissolution, §§79-4-14.06, 79-4-14.07.

Stock and stockholders.

Acquisition by corporation of own shares, §79-4-6.31.

Actions taken without meeting of shareholders, §79-4-7.04.

Appraisal rights.

Appraisal notice, §79-4-13.22.

Beneficial owners.

Assertion of appraisal rights by, §79-4-13.03.

Definitions, §79-4-13.01.

Generally, §79-4-13.02.

Limitations on other remedies, §79-4-13.40.

CORPORATIONS —Cont'd

Stock and stockholders —Cont'd

Appraisal rights —Cont'd

Nominees.

Assertion of appraisal rights by, §79-4-13.03.

Notice of intent to demand payment, §79-4-13.21.

Notice of rights, §79-4-13.20.

Other remedies limited, §79-4-13.40.

Payment of fair value of shares, §79-4-13.24.

After-acquired shares, §79-4-13.25.

Court action to determine fair value of shares, §79-4-13.30.

Court costs and expenses, §79-4-13.31.

Procedure if shareholder dissatisfied with payment or offer, §79-4-13.26.

Court action, §79-4-13.30.

Right to, §79-4-13.02.

Perfection of rights, §79-4-13.23.

Reorganization transaction, §79-4-13.02.

Withdrawal from appraisal process, §79-4-13.23.

Articles of incorporation.

Acquisition by corporation of own shares without shareholder action, §79-4-6.31.

Amendment.

Board of directors proposing amendments to shareholders, §79-4-10.03.

Issuing shares of class or series, §79-4-6.02.

Shareholder has no vested property right resulting from provisions, §79-4-10.01.

Authorized shares, §79-4-6.01.

Defined, §79-4-1.40.

Beneficial owner of shares registered in name of nominee recognized as shareholder, §79-4-7.23.

Bylaws.

Amending or repealing, §79-4-10.20.

Call for payment by board of directors, §79-4-6.20.

Certificate, §79-4-6.25.

Classes of shares.

Articles of incorporation to prescribe, §79-4-6.01.

Conflicting interest transactions.

Approval, §79-4-8.63.

CORPORATIONS —Cont'd

Stock and stockholders —Cont'd

Consideration for shares, §79-4-6.21.

Contract between subscriber and corporation.

Subscription agreement entered into after incorporation, §79-4-6.20.

Control shares.

Voting, acquisition, §§79-27-1 to 79-27-11.

Co-owners constitute one shareholder, §79-4-1.42.

Default in payment of money or property under subscription agreement.

Collection of amount owed as any other debt, §79-4-6.20.

Derivative proceedings, §§79-4-7.40 to 79-4-7.48.

Disposition of assets.

Not requiring shareholder approval, §79-4-12.01.

Requiring shareholder approval, §79-4-12.02.

Dissolution.

Approval of voluntary dissolution, §79-4-14.02.

Assets vested in stockholders, §79-1-17.

Distinguishing designation for each class.

More than one class shares authorized, §79-4-6.01.

Distributions to shareholders, §79-4-6.40.

Distribution defined, §79-4-1.40.

Unlawful distributions, director liability, §79-4-8.33.

Enjoining corporation power to act, §79-4-3.04.

Escrow of shares issued for contract for future services or benefits or promissory note, §79-4-6.21.

Exception to notice required to be given by act, §79-4-16.06.

Expenses of selling or underwriting shares, §79-4-6.28.

Fractional shares, §79-4-6.04.

Fully paid and nonassessable shares.

Receipt of considerations specified in subscription agreements, §79-4-6.20.

Increase or decrease in number of directors.

When shareholder approval required, §79-4-8.03.

CORPORATIONS —Cont'd

Stock and stockholders —Cont'd

Inspection of list of shareholders by shareholder, §79-4-7.20.

Inspection of records, §§79-4-16.02, 79-4-16.04.

Agent or attorney has same inspection and copying rights, §79-4-16.03.

Compliance with shareholder's demand, §79-4-16.03.

Costs incurred in obtaining court order, payment, §79-4-16.04.

Costs of copies, imposing reasonable charge, §79-4-16.03.

Court-ordered inspection, §79-4-16.04.

Entitlement, §79-4-16.02.

Requirements for inspecting, §79-4-16.02.

Scope, §79-4-16.03.

Irrevocability of subscription entered into before incorporation, §79-4-6.20.

Irrevocable appointment of proxy. Appointment coupled with interest, §79-4-7.22.

Issuance, §79-4-6.21.

Without certificates, §79-4-6.26.

Issuing number of shares or class or series authorized, §79-4-6.03.

Liability, §79-4-6.22.

List of shareholders entitled to notice of meeting, §79-4-7.20.

Meetings, §§79-4-7.01 to 79-4-7.08.

Special meetings, §§79-4-7.02, 79-27-9.

Voting of shares generally, §§79-4-7.20 to 79-4-7.29.

Merger, consolidation or share exchange.

Shareholder protection, voting requirements, §§79-25-1 to 79-25-9.

Nominee holding stock for beneficial owner.

Recognition of beneficial owner as shareholder, §79-4-7.23.

Notice.

Communicated by corporation to, §79-4-1.41.

Exception to notice required to be given by act, §79-4-16.06.

Shareholders sharing common address, §79-4-1.44.

CORPORATIONS —Cont'd

Stock and stockholders —Cont'd

- Number of shares.
 - Articles of incorporation to prescribe, §79-4-6.01.
- One shareholder, constituting, §79-4-1.42.
- Options and warrants for purchase of shares or other securities.
 - Designation of recipients, §79-4-6.24.
 - Issuance of, §79-4-6.24.
- Outstanding shares until reacquired, redeemed, converted or cancelled, §79-4-6.03.
- Payment terms of subscription, director may determine, §79-4-6.20.
- Personal liability for acts or debts of corporation, §79-4-6.22.
- Preemptive right of shareholder to acquire unissued shares, §79-4-6.30.
- Preemptive rights.
 - Acquisition of unissued shares, §79-4-6.30.
- Preferences, limitations and relative rights of classes.
 - Articles of incorporation to prescribe, §79-4-6.01.
 - Board of directors determining if articles provides, §79-4-6.02.
- Proxies.
 - Voting shares by, §79-4-7.22.
- Reacquisition, redemption or conversion of outstanding shares, §79-4-6.03.
- Recognition of beneficial owner as shareholder.
 - Shares registered in name of nominee, §79-4-7.23.
- Record inspection, §§79-4-16.02, 79-4-16.04.
- Record of stockholders to be maintained by corporation, §79-4-16.01.
- Redeemable shares.
 - Not entitled to vote after notice of redemption mailed, §79-4-7.21.
- Redemption of franchise sold to satisfy judgment, §79-1-15.
- Removal of directors, §79-4-8.08.
 - Commencement of proceeding by shareholders, percentage required, §79-4-8.09.
- Reports to stockholders, §79-4-16.21.
 - Financial statements, §79-4-16.20.

CORPORATIONS —Cont'd

Stock and stockholders —Cont'd

- Rescinding subscription of agreement.
 - Default in payment, §79-4-6.20.
- Restrictions on transfer or registration of transfer, §79-4-6.27.
- Revocable appointment of proxy, §79-4-7.22.
- Scrip in registered or bearer form, §79-4-6.04.
- Series of class given distinguishing designations, §79-4-6.02.
- Share certificate, §79-4-6.25.
- Share dividends, §79-4-6.23.
- Share exchange, §79-4-11.03.
 - Abandonment, §79-4-11.08.
 - Appraisal rights of shareholders, §§79-4-13.01 to 79-4-13.31.
 - Articles of exchange, §79-4-11.06.
 - Fee for filing, §79-4-1.22.
 - Definitions, §79-4-11.01.
 - Effect, §79-4-11.07.
 - Plan of share exchange, §79-4-11.03.
 - Action on plan, §79-4-11.04.
- Shareholder protection on business combination.
 - Voting requirements, §§79-25-1 to 79-25-9.
- Shareholder defined, §79-4-1.40.
- Shareholder meetings, §§79-4-7.01 to 79-4-7.08.
 - Special meetings, §§79-4-7.02, 79-27-9.
 - Voting of shares generally, §§79-4-7.20 to 79-4-7.29.
- Shareholder protection.
 - Voting requirements on business combination, §§79-25-1 to 79-25-9.
 - Definitions, §79-25-3.
 - Exceptions, §79-25-7.
 - Generally, §79-25-3.
 - Mississippi shareholder protection act, §79-25-1.
 - Severability of provisions, §79-25-9.
- Shares defined, §79-4-1.40.
- Similar names, shareholders registered in.
 - Names constitute one shareholder, §79-4-1.42.
- Single trust, estate or account, one shareholder, §79-4-1.42.
- Special meetings, §§79-4-7.02, 79-27-9.
- Subscription for shares, §79-4-6.20.

CORPORATIONS —Cont'd

Stock and stockholders —Cont'd

Terms of class or series determining
by board, §79-4-6.02.

Unissued shares.

Corporation's acquisition of own
shares, §79-4-6.31.

Shareholder's preemptive right,
§79-4-6.30.

Voluntary dissolution, approval,
§79-4-14.02.

Voting agreements, §§79-4-7.31,
79-4-7.32.

Voting entitlement, §79-4-7.21.

Control share acquisition.

Voting on resolution for
acquisition, §79-27-9.

Voting power of control shares,
§79-27-7.

Cumulative voting for directors,
§79-4-7.28.

Electing directors, §79-4-7.28.

Greater requirements provided in
articles of incorporation,
§79-4-7.27.

Increasing quorum or voting
requirements.

Amendment of bylaws,
§79-4-10.21.

Inspectors appointed to act,
§79-4-7.29.

Proxies, §79-4-7.22.

Shareholder protection on business
combination, §§79-25-1 to
79-25-9.

Voting agreements, §§79-4-7.31,
79-4-7.32.

Voting groups, §§79-4-7.25,
79-4-7.26.

Defined, §79-4-1.40.

Voting trusts, §79-4-7.30.

Voting groups, §§79-4-7.25, 79-4-7.26.

Amendment of articles of
incorporation.

Voting on amendments by voting
groups, §79-4-10.04.

Defined, §79-4-1.40.

Filling vacancy in office of director
elected by group, §79-4-8.10.

Removal of directors elected by,
§79-4-8.08.

Voting of shares generally, §§79-4-7.20
to 79-4-7.29.

Voting trusts, §79-4-7.30.

Without certificate, issuance,
§79-4-6.26.

CORPORATIONS —Cont'd

Street address change, §79-4-5.02.

**Subscription for shares before
incorporation**, §79-4-6.20.

Subsidiaries.

Merger between parent and subsidiary
or between subsidiaries,
§79-4-11.05.

Trade secrets, §79-23-1.

Ultra vires, §79-4-3.04.

Unissued shares.

Corporation's acquisition of own
shares, §79-4-6.31.

Shareholder's preemptive rights,
§79-4-6.30.

**Unlawful distributions to
shareholders.**

Director liability, §79-4-8.33.

Voluntary dissolution, §§79-4-14.01 to
79-4-14.09.

Nonprofit corporations, §§79-11-333 to
79-11-345.

Voting agreements, §§79-4-7.31,
79-4-7.32.

Nonprofit corporation members,
§79-11-229.

**Voting by members of nonprofit
corporations**, §§79-11-211 to
79-11-229.

Voting entitlement of shares,
§79-4-7.21.

Acceptance of votes by corporation,
§79-4-7.24.

Bylaw amendment increasing voting
requirements, §79-4-10.21.

Control share acquisition.

Voting on resolution for acquisition,
§79-27-9.

Voting power of control shares,
§79-27-7.

Cumulative voting for directors,
§79-4-7.28.

Electing board of directors, §79-4-7.28.

Greater requirements provided in
articles of incorporation,
§79-4-7.27.

Inspectors appointed to act, §79-4-7.29.

Merger, consolidation or share
exchange.

Shareholder protection on business
combination, §§79-25-1 to
79-25-9.

Proxies, §79-4-7.22.

Voting groups, §§79-4-7.25, 79-4-7.26.

CORPORATIONS —Cont'd

Voting groups.

Adding, changing or deleting quorum or voting requirements.

Amendment of articles of incorporation, §§79-4-7.25, 79-4-7.27.

Amendment of articles of incorporation.

Voting on amendments by voting groups, §79-4-10.04.

Defined, §79-4-1.40.

Filling vacancy in office of director elected by group, §79-4-8.10.

Majority of votes constitutes quorum, §79-4-7.25.

Multiple voting groups, action by, §79-4-7.26.

Quorum required to take action, §79-4-7.25.

Removal of directors elected by, §79-4-8.08.

Single voting group, action by, §79-4-7.26.

Voting requirements on business combination, §§79-25-1 to 79-25-9.

Definitions, §79-25-3.

Exceptions, §79-25-7.

Generally, §79-25-5.

Mississippi shareholder protection act, §79-25-1.

Severability, §79-25-9.

Voting trusts, §79-4-7.30.

Winding up and liquidating.

Administratively dissolved corporation continuing in existence for, §79-4-14.21.

Judicial dissolution, §79-4-14.33.

Voluntary dissolution.

Continuance in business for, §79-4-14.05.

Written notice, §79-4-1.41.

Shareholders sharing common address, §79-4-1.44.

COSTS.

Corporations.

Appraisal rights of shareholders.

Court action to determine fair value of shares, §79-4-13.31.

Court-ordered inspection of records, payment, §79-4-16.04.

Derivative proceedings, §79-4-7.46.

Limited liability companies, §79-29-1106.

COSTS —Cont'd

Derivative proceedings —Cont'd

Limited partnerships, §79-14-1004.

Indemnification.

Corporate directors, officers, employees or agents, §§79-4-8.50 to 79-4-8.59.

Limited liability companies, §79-29-110.

Nonprofit corporations.

Directors, officers, employees or agents, §79-11-281.

Limited liability companies.

Derivative proceedings, §79-29-1106.

Limited partnerships.

Derivative actions, §79-14-1004.

Professional corporations.

Compulsory acquisition of shares after death or disqualification of shareholder.

Court action to determine fair value of shares, §79-10-43.

Professional limited liability companies.

Compulsory acquisition to purchase membership interest after death or disqualification of member.

Court action to appraise membership interest, §§79-29-913, 79-29-914.

CRAPPIE.

Aquaculture.

Issuance of cultivation and marketing permits for hybrid black stripe crappie, §79-22-9.

CRIMES.

Agriculture.

Cooperative marketing associations.

Breach of marketing contracts, §79-19-49.

Spreading false reports about finances or management, §79-19-49.

Charitable solicitations, §§79-11-519, 79-11-529.

Corporations.

Nonprofit corporations.

Signing false document to be filed, §79-11-123.

Farm bureau, unlawful use of words, §79-17-11.

Nonprofit corporations.

Signing false document to be filed, §79-11-123.

CUSTODIANS.

Corporations.

- Judicial dissolution.
- Appointment, §79-4-14.32.
- Nonprofit corporations,
§§79-11-357, 79-11-359.
- Shareholder action to appoint,
§79-4-7.48.

D

DAIRIES AND DAIRY PRODUCTS.

- Agricultural associations generally,**
§§79-17-1 to 79-17-41.
- Cooperative marketing associations,**
§§79-19-1 to 79-19-63.

DAMAGES.

- Agricultural cooperative marketing associations.**
- Recovering liquidated damages,
§79-19-59.

DAY CARE CENTERS.

- Religious society, ecclesiastical body or congregation's power to own,**
§79-11-33.

DEADLOCKED DIRECTORS OR SHAREHOLDERS.

- Grounds for judicially dissolving corporation,** §79-4-14.30.

DEBTORS AND CREDITORS.

Limited liability companies.

- Creditor's right to charge interest of member, §79-29-703.
- Member status as creditor of company with respect to distribution,
§79-29-604.

Limited partnerships.

- Judgment creditor's charge against partnership interest, §79-14-703.

Nonprofit corporations.

- Court ordering dissolution.
- Creditors' claim reduced to judgment and execution returned unsatisfied,
§79-11-355.
- Creditor actions to reach liability of member to corporation.
- Final judgment for creditor against corporation and execution returned unsatisfied,
§79-11-185.

DECEDENTS' ESTATES.

Limited liability companies.

- Power of estate of deceased member to exercise rights, §79-29-705.
- Professional limited liability companies.
- Compulsory acquisition of membership interest after death of member, §§79-29-913, 79-29-914.

Limited partnerships.

- Power of estate of deceased partner to exercise rights, §79-14-705.

Professional limited liability companies.

- Compulsory acquisition of membership interest after death of member,
§§79-29-913, 79-29-914.

Proxies.

- Executing without order or direction of court, §79-1-5.

DECLARATION OF TRUSTS.

Investment trusts.

- Amendment, §79-15-17.
- Content requirements, §79-15-7.
- Election and removal of trustees, providing for, §79-15-15.
- Established by, §79-15-5.
- Foreign investment trusts.
- Amendment, §79-15-121.
- Recording, §79-15-19.

DEEDS.

Religious societies.

- Divesting title by deed, number of members required, §79-11-31.

DEFECT IN ORGANIZATION OF CORPORATION.

- Not defense to suit against corporation,** §79-1-7.

DEFENSES.

Corporations.

- Defense or informality in organization not defense to suit against corporation, §79-1-7.

Defect or informality in organization of corporation.

- Not defense to suit against corporation, §79-1-7.

DEFERRED COMPENSATION.

Professional corporations.

- Compulsory acquisition of shares after death or disqualification of shareholder, §79-10-37.

DEFINED TERMS.

Acquiring person.

Control share act, §79-27-5.

Advertiser.

Charitable solicitations regulation,
§79-11-526.

Affiliate.

Appraisal rights of shareholders,
§79-4-13.01.

Control share act, §79-27-5.

Shareholder protection act, §79-25-3.

Agricultural products.

Agricultural associations, §79-17-39.

All voting power.

Control share act, §79-27-5.

Announcement date.

Shareholder protection act, §79-25-3.

Approved by the members.

Nonprofit corporation act, §79-11-127.

Aquaculture, §79-22-5.

Aquaculture facility, §79-22-5.

Aquaculturist, §79-22-5.

Aquatic product.

Aquatic products marketing
associations, §79-21-5.

Fresh and salt water co-operatives,
§79-21-53.

Articles of incorporation, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Asbestos claim.

Corporate successor in
asbestos-related liability, §79-33-1.

Associate.

Shareholder protection act, §79-25-3.

Association.

Aquatic products marketing
associations, §79-21-5.

Fresh and salt water co-operatives,
§79-21-53.

Authorized shares.

Business corporation act, §79-4-1.40.

Beneficial holder.

Limited liability companies.
Appraisal rights, §79-29-214.

Beneficial owner.

Shareholder protection act, §79-25-3.

Beneficial shareholder.

Appraisal rights of shareholders,
§79-4-13.01.

Business.

Uniform partnership act, §79-13-101.

Bylaws.

Nonprofit corporation act, §79-11-127.

Certificate of formation.

Limited liability companies,
§79-29-103.

DEFINED TERMS —Cont'd

Certificate of limited partnership,
§79-14-101.

Charitable gift annuity, §79-11-651.

**Charitable or nonprofit
organization.**

Charitable gift annuity, §79-11-651.

Regulation of charitable solicitations,
§79-11-501.

Charitable purpose.

Regulation of charitable solicitations,
§79-11-501.

Class.

Nonprofit corporation act, §79-11-127.

Commercial fishing.

Aquatic products marketing
associations, §79-21-5.

Fresh and salt water co-operatives,
§79-21-53.

Common stock.

Shareholder protection act, §79-25-3.

Conspicuous.

Business corporation act, §79-4-1.40.

Container.

Regulation of charitable solicitations,
§79-11-501.

Continuing director.

Shareholder protection act, §79-25-3.

Contributions.

Limited liability companies,
§79-29-103.

Limited partnerships, §79-14-101.

Regulation of charitable solicitations,
§79-11-501.

Control.

Shareholder protection act, §79-25-3.

Controlled by.

Shareholder protection act, §79-25-3.

Controlling.

Shareholder protection act, §79-25-3.

Control shares, §79-27-5.

Corporation.

Appraisal rights of shareholders,
§79-4-13.01.

Business corporation act, §79-4-1.40.

Corporate successor in
asbestos-related liability, §79-33-1.

Indemnification, §79-4-8.50.

Nonprofit corporation act, §79-11-127.

Shareholder protection act, §79-25-3.

Cultivation permit.

Aquaculture act of 1988, §79-22-5.

Cultured aquatic products.

Aquaculture act of 1988, §79-22-5.

Debtor in partnership.

Uniform partnership act, §79-13-101.

DEFINED TERMS —Cont'd

Delegates.

Nonprofit corporation act, §79-11-127.

Deliver.

Limited liability companies,
§79-29-103.

Limited partnerships, §79-14-101.

Nonprofit corporation act, §79-11-127.

Delivery.

Business corporation act, §79-4-1.40.

Limited liability companies,
§79-29-103.

Limited partnerships, §79-14-101.

Nonprofit corporation act, §79-11-127.

Derivative proceedings.

Business corporations act, §79-4-7.40.

Limited liability companies,
§79-29-103.

Determination date.

Shareholder protection act, §79-25-3.

Director.

Indemnification, §79-4-8.50.

Nonprofit corporation act, §79-11-127.

Nonprofit corporations, §79-11-281.

Disqualified person.

Professional corporation act, §79-10-5.

Professional limited liability
companies, §79-29-902.

Dissolved corporation, §79-4-14.03.

Distribution.

Business corporation act, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Uniform partnership act, §79-13-101.

Domesticated fish.

Aquatic products marketing
associations, §79-21-5.

Fresh and salt water co-operatives,
§79-21-53.

Domestic corporation.

Business corporation act, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Domestic fish farming.

Aquatic products marketing
associations, §79-21-5.

Fresh and salt water co-operatives,
§79-21-53.

**Domestic professional corporation,
§79-10-5.**

**Domestic professional limited
liability company, §79-29-902.**

Effective date of notice.

Business corporation act, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Electronically transmitted.

Limited liability companies,
§79-29-103.

DEFINED TERMS —Cont'd

Electronically transmitted —Cont'd

Limited partnerships, §79-14-101.

Nonprofit corporation act, §79-11-127.

Electronic transmission.

Business corporation act, §79-4-1.40.

Limited liability companies,
§79-29-103.

Limited partnerships, §79-14-101.

Nonprofit corporation act, §79-11-127.

Employee.

Business corporation act, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Endowment fund.

Uniform management of institutional
funds act, §79-11-601.

Entity.

Business corporation act, §79-4-1.40.

Limited liability companies,
§79-29-103.

Limited partnerships, §79-14-101.

Nonprofit corporation act, §79-11-127.

Equity security.

Shareholder protection act, §79-25-3.

Event.

Charitable solicitations regulation,
§79-11-526.

Event of dissociation.

Limited liability companies,
§79-29-103.

**Event of withdrawal of a general
partner.**

Limited partnerships, §79-14-101.

Execution.

Uniform partnership act, §79-13-101.

Expenses.

Business corporation act, §79-4-1.40.

Indemnification, §79-4-8.50.

Nonprofit corporations, §79-11-281.

Facts objectively ascertainable.

Business corporation act, §79-4-1.40.

Fair value.

Corporations.

Appraisal rights of shareholders,
§79-4-13.01.

Limited liability companies.

Appraisal rights, §79-29-214.

File.

Nonprofit corporation act, §79-11-127.

Filed.

Nonprofit corporation act, §79-11-127.

Filed document.

Corporations, §79-4-1.20.

Filing.

Nonprofit corporation act, §79-11-127.

DEFINED TERMS —Cont'd

Filing entity.

Business corporation act, §79-4-1.40.

Foreign corporation.

Business corporation act, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Foreign investment trust, §79-15-3.

Foreign limited liability company,
§79-29-103.

**Foreign limited liability
partnership, §79-13-101.**

Foreign limited partnership,
§79-14-101.

Foreign professional corporation,
§79-10-5.

**Foreign professional limited liability
company, §79-29-902.**

Fund-raising counsel.

Regulation of charitable solicitations,
§79-11-501.

General partner.

Limited partnerships, §79-14-101.

Uniform partnership act, §79-13-901.

Gift instrument.

Uniform management of institutional
funds act, §79-11-601.

Governing board.

Uniform management of institutional
funds act, §79-11-601.

Governmental subdivision.

Business corporation act, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Historic dollar value.

Uniform management of institutional
funds act, §79-11-601.

Holder.

Limited liability companies.

Appraisal rights, §79-29-214.

Includes.

Business corporation act, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Individual.

Business corporation act, §79-4-1.40.

Nonprofit corporation act, §79-11-127.

Institution.

Uniform management of institutional
funds act, §79-11-601.

Institutional fund.

Uniform management of institutional
funds act, §79-11-601.

Interest.

Appraisal rights of shareholders,
§79-4-13.01.

Corporations, §79-4-11.01.

Limited liability companies,
§79-29-103.

DEFINED TERMS —Cont'd

Interested person.

Appraisal rights of shareholders,
§79-4-13.01.

Interested shareholder.

Shareholder protection act, §79-25-3.

Interested shares.

Control share act, §79-27-5.

Investment trust, §79-15-3.

Law.

Professional corporation act, §79-10-5.

Professional limited liability
companies, §79-29-902.

Legal entity.

Uniform partnership act, §79-13-101.

Liability.

Indemnification, §79-4-8.50.

Nonprofit corporations, §79-11-281.

Licensing authority.

Professional corporation act, §79-10-5.

Professional limited liability
companies, §79-29-902.

Limited liability companies,
§79-29-103.

**Limited liability company
agreement, §79-29-103.**

Limited liability company interest,
§79-29-103.

Limited liability partnership.

Uniform partnership act, §79-13-101.

Limited partner, §79-14-101.

Uniform partnership act, §79-13-901.

Limited partnership, §79-14-101.

Uniform partnership act, §79-13-901.

Manager.

Limited liability companies,
§79-29-103.

Marketing permit.

Aquaculture act of 1988, §79-22-5.

Market value.

Shareholder protection act, §79-25-3.

Means.

Business corporation act, §79-4-1.40.

Member.

Aquatic products marketing
associations, §79-21-5.

Fresh and salt water co-operatives,
§79-21-53.

Limited liability companies,
§79-29-103.

Nonprofit corporation act, §79-11-127.

Membership.

Nonprofit corporation act, §79-11-127.

Merger.

Corporations, §79-4-11.01.

DEFINED TERMS —Cont'd

Merger —Cont'd

Limited liability companies,
§79-29-103.

Notice.

Business corporation act, §79-4-1.40.
Nonprofit corporation act, §79-11-127.

Officers.

Indemnification, §79-4-8.50.

Official capacity.

Indemnification, §79-4-8.50.
Nonprofit corporation, §79-11-281.

Organizational documents.

Corporations, §79-4-11.01.
Limited liability companies,
§79-29-103.
Limited partnerships, §79-14-101.

Other entity.

Corporations, §79-4-11.01.

Participating shares.

Corporations, §79-4-11.04.

Partner.

Limited partnerships, §79-14-101.
Uniform partnership act, §79-13-901.

Partnership.

Uniform partnership act, §79-13-101.

Partnership agreement.

Limited partnerships, §79-14-101.
Uniform partnership act, §79-13-101.

Partnership at will.

Uniform partnership act, §79-13-101.

Partnership interest.

Limited partnerships, §79-14-101.
Uniform partnership act, §79-13-101.

Partner's interests in the partnership.

Uniform partnership act, §79-13-101.

Party.

Indemnification by corporation,
§79-4-8.50.
Nonprofit corporations, §79-11-281.

Party to a merger.

Corporations, §79-4-11.01.

Party to a share exchange.

Corporations, §79-4-11.01.

Person.

Aquatic products marketing
associations, §79-21-5.
Business corporation act, §79-4-1.40.
Control share act, §79-27-5.
Fresh and salt water co-operatives,
§79-21-53.
Limited liability companies,
§79-29-103.
Limited partnerships, §79-14-101.

DEFINED TERMS —Cont'd

Person —Cont'd

Nonprofit corporation act, §79-11-127.
Regulation of charitable solicitations,
§79-11-501.
Uniform partnership act, §79-13-101.

Plan.

Corporations, §79-4-1.20.

Preferred shares.

Appraisal rights of shareholders,
§79-4-13.01.

Principal office.

Business corporation act, §79-4-1.40.
Nonprofit corporation act, §79-11-127.

Proceeding.

Business corporation act, §79-4-1.40.
Indemnification by corporation,
§79-4-8.50.
Nonprofit corporation act, §79-11-127.
Nonprofit corporations, §79-11-281.

Producer.

Agricultural associations, §79-17-35.
Aquatic products marketing
associations, §79-21-5.
Fresh and salt water co-operatives,
§79-21-53.

Professional corporation, §79-10-5.

Professional fund-raiser.

Regulation of charitable solicitations,
§79-11-501.

Professional limited liability

company, §§79-29-103, 79-29-902.

Professional service.

Professional corporation act, §79-10-5.
Professional limited liability
companies, §79-29-902.

Professional solicitor.

Regulation of charitable solicitations,
§79-11-501.

Property.

Uniform partnership act, §79-13-101.

Public safety organization.

Regulation of charitable solicitations,
§79-11-501.

**Qualified charitable gift annuity,
§79-11-651.**

Qualified director.

Director of corporation's conflicting
interest transaction, §79-4-1.43.

Qualified person.

Professional corporation act, §79-10-5.
Professional limited liability
companies, §79-29-902.

Qualified shares.

Director of corporation's conflicting
interest transaction, §79-4-8.63.

DEFINED TERMS —Cont'd

Record date.

- Business corporation act, §79-4-1.40.
- Nonprofit corporation act, §79-11-127.

Record holder.

- Limited liability companies, §79-29-214.

Record shareholder.

- Appraisal rights of shareholders, §79-4-13.01.

Religious corporation, §79-11-127.

Religious society.

- Perpetual religious society trust fund, §79-11-41.

Secretary.

- Business corporation act, §79-4-1.40.
- Nonprofit corporation act, §79-11-127.

Senior executive.

- Corporations.
- Appraisal rights of shareholders, §79-4-13.01.

Share exchange.

- Corporations, §79-4-11.01.

Shareholder.

- Appraisal rights of shareholders, §79-4-13.01.
- Business corporation act, §79-4-1.40.
- Derivative proceedings, §79-4-7.40.

Shares.

- Business corporation act, §79-4-1.40.

Sign.

- Business corporation act, §79-4-1.40.
- Limited liability companies, §79-29-103.
- Limited partnerships, §79-14-101.
- Nonprofit corporation act, §79-11-127.

Signature.

- Business corporation act, §79-4-1.40.
- Limited liability companies, §79-29-103.
- Limited partnerships, §79-14-101.
- Nonprofit corporation act, §79-11-127.

Solicit.

- Regulation of charitable solicitations, §79-11-501.

Solicitation.

- Regulation of charitable solicitations, §79-11-501.

Sponsor.

- Charitable solicitations regulation, §79-11-526.

State.

- Business corporation act, §79-4-1.40.
- Limited partnerships, §79-14-101.
- Nonprofit corporation act, §79-11-127.

DEFINED TERMS —Cont'd

State —Cont'd

- Uniform partnership act, §79-13-101.

Statement.

- Uniform partnership act, §79-13-101.

Subscriber.

- Business corporation act, §79-4-1.40.

Successor.

- Corporate successor in asbestos-related liability, §79-33-1.

Successor asbestos-related liabilities.

- Corporate successor in asbestos-related liability, §79-33-1.

Survivor.

- Corporations, §79-4-11.01.
- Limited liability companies, §79-29-103.

Transfer.

- Uniform partnership act, §79-13-101.

Transferor.

- Corporate successor in asbestos-related liability, §79-33-1.

Trustee.

- Regulation of charitable solicitations, §79-11-501.

Under common control with.

- Shareholder protection act, §79-25-3.

United States.

- Business corporation act, §79-4-1.40.
- Nonprofit corporation act, §79-11-127.

Valuation date.

- Shareholder protection act, §79-25-3.

Vote.

- Nonprofit corporation act, §79-11-127.

Voting group.

- Business corporation act, §79-4-1.40.

Voting power.

- Business corporation act, §79-4-1.40.
- Nonprofit corporation act, §79-11-127.

Voting shares.

- Corporations, §79-4-11.04.

Voting stock.

- Shareholder protection act, §79-25-3.

DENTISTS.

Corporations.

- Professional corporations.
- Generally, §§79-10-1 to 79-10-117.
- Professional service defined as including services by, §79-10-5.

Limited liability companies.

- Professional limited liability companies.
- Generally, §§79-29-901 to 79-29-933.

DENTISTS —Cont'd

Limited liability companies —Cont'd

- Professional limited liability companies —Cont'd
- Professional service defined to include services by dentists, §79-29-902.

Professional corporations.

- Generally, §§79-10-1 to 79-10-117.
- Professional service defined as including services by, §79-10-5.

Professional limited liability companies.

- Generally, §§79-29-901 to 79-29-933.
- Professional service defined to include services by dentists, §79-29-902.

DERIVATIVE PROCEEDINGS.

Corporations, §§79-4-7.40 to 79-4-7.48.

- Nonprofit corporations.
- Proceedings brought on behalf of corporation, §79-11-193.

Limited liability companies, §§79-29-1101 to 79-29-1107.

Limited partnerships, §§79-14-1001 to 79-14-1004.

DISCIPLINARY ACTIONS.

Aquaculture.

- Failure by aquaculturist to provide information required.
- Nonrenewal, suspension or cancellation of permits, §79-22-13.

Charitable solicitors.

- Denial, suspension or revocation of registration or exemption, §79-11-509.

Foreign business trusts.

- Revocation of certificate of authority, §§79-16-27, 79-16-29.

Nonprofit foreign corporations.

- Revocation of certificate of authority, §§79-11-385 to 79-11-389.

DISGORGEMENT.

Charitable organizations violating provisions as to charitable solicitations.

- Issuance by attorney general, §79-11-509.

DISMISSAL OF ACTIONS.

Derivative proceedings.

- Business corporations act.
- Proceedings not in best interest of corporation, §79-4-7.44.

DISMISSAL OF ACTIONS —Cont'd

Derivative proceedings —Cont'd

- Limited liability companies, §79-29-1104.

Limited liability companies.

- Derivative proceedings, §79-29-1104.

DISSOCIATION OF MEMBER OF LIMITED LIABILITY COMPANY.

Distribution upon dissociation, §79-29-602.

Events causing, §79-29-307.

DISSOLUTION.

Corporations, §§79-4-14.01 to 79-4-14.40.

Investment trusts, §79-15-21.

Limited liability companies, §§79-29-801 to 79-29-807.

Limited partnerships, §§79-14-801 to 79-14-804.

Nonprofit corporations, §§79-11-333 to 79-11-361.

Partnerships, §§79-13-801 to 79-13-807.

Professional corporations.

- Judicial dissolution, §79-10-85.

DISTRIBUTIONS.

Limited liability companies.

- Assets of company after dissolution, §79-29-805.

- Creditor of company with respect to distribution.

- Status of member on entitlement to receive, §79-29-604.

- In kind distributions, §79-29-603.

- Interim distributions, §79-29-601.

- Limitations, §79-29-605.

- Sharing among members, §79-29-504.

- Upon dissociation, §79-29-602.

- Wrongful distribution, liability, §79-29-606.

Limited partnerships.

- In kind distributions, §79-14-605.

- Interim distributions, §79-14-601.

- Limitations, §79-14-607.

- Right to distribution, §79-14-606.

- Sharing of distributions, §79-14-504.

- Upon withdrawal, §79-14-604.

- Winding up of affairs, §79-14-804.

Nonprofit corporations.

- Authorization for making, §79-11-293.

DIVIDENDS.

Distributions to shareholders, §79-4-6.40.

- Unlawful distributions, director liability, §79-4-8.33.

DIVIDENDS —Cont'd

Share dividends, §79-4-6.23.

DOMICILE.

Investment trusts, §79-15-23.

DONATIONS.

Charitable solicitations.

Regulation generally, §§79-11-501 to 79-11-529.

Corporations.

Power to make, §79-1-3.

Endowment funds, management

generally, §§79-11-601 to 79-11-617.

Institutional funds, management

generally, §§79-11-601 to 79-11-617.

Management of institutional funds,

§§79-11-601 to 79-11-617.

Nonprofit corporations.

Charitable, scientific or educational purposes, §79-11-151.

DUE CARE.

Directors of corporation, duty,

§79-4-8.30.

Duty of officer of corporation,

§79-4-8.42.

DUES.

Agricultural associations.

Bylaws providing for, §79-17-19.

Nonprofit corporations, §79-11-183.

DUTY OF CARE.

Director of corporation, §79-4-8.30.

Governing board of institutional funds, §79-11-611.

Limited liability companies.

Manager's duty, §79-29-402.

Officers of corporation, §79-4-8.42.

DUTY OF GOOD FAITH.

Directors of corporation, §79-4-8.30.

Limited liability companies.

Manager's duty, §79-29-402.

Nonprofit corporations.

Director's duty, §79-11-267.

Duty of officer to act in, §79-11-275.

Officers of corporation, §79-4-8.42.

E

ECCLESIASTICAL BODIES.

Nonprofit corporations.

General provisions, §§79-11-101 to 79-11-403.

ECCLESIASTICAL BODIES —Cont'd

Perpetual religious society trust funds.

Establishment, purposes, audit, §§79-11-41 to 79-11-47.

Power to own certain real property, §79-11-33.

Religious corporations.

Defined, §79-11-127.

Provisions applicable to, §79-11-401.

Provisions inapplicable to, §79-11-403.

Religious doctrine inconsistent with statutes controlling, §79-11-403.

Religious societies generally,

§§79-11-31 to 79-11-47.

EDUCATIONAL GIFTS.

Nonprofit corporations, §79-11-151.

ELECTIONS.

Meetings of stockholders.

Voting of shares generally, §§79-4-7.20 to 79-4-7.29.

ELEEMOSYNARY ORGANIZATIONS.

Nonprofit corporations generally,

§§79-11-101 to 79-11-403.

Uniform management of

institutional funds act,

§§79-11-601 to 79-11-617.

ENDOWMENT FUNDS.

Uniform management of

institutional funds act,

§§79-11-601 to 79-11-617.

ESCROW.

Shares of corporation.

Shares issued for contract for future services or benefits or promissory note, §79-4-6.21.

EVIDENCE.

Corporations.

Copies of filed documents, §79-4-1.27.

Nonprofit corporations.

Certified copy as conclusive evidence of filing, §79-11-119.

Nonprofit corporations.

Filing of document, certified copy, §79-11-119.

EXECUTION OF JUDGMENTS.

Corporations.

Corporate property and franchise sold to satisfy judgment, §79-1-13.

Redemption of franchise, §79-1-15.

EXPRESS TRUSTS.

Investment trusts.

Generally, §§79-15-1 to 79-15-29.

F

FALSE SWEARING.

Limited partnerships.

Certificate of limited partnership,
§79-14-207.

FARM BUREAU.

Agricultural associations.

Generally, §§79-17-1 to 79-17-41.

Use of words unlawful, §79-17-11.

FARM-RAISED TILAPIA.

Labeling requirements, §79-22-35.

FARMS AND FARMING.

Agricultural cooperatives marketing associations.

Federal credit act of 1933.

Acquiring and holding stock in
accordance with act, §79-19-63.

General provisions, §§79-19-1 to
79-19-63.

Farm bureau.

General provisions, §§79-17-1 to
79-17-41.

Use of word unlawful, §79-17-11.

FEDERATION OF AGRICULTURAL ASSOCIATIONS.

**Agricultural associations generally,
§§79-17-1 to 79-17-41.**

**Associations authorized to federate,
§79-17-31.**

**Managed by board of directors,
organizational meeting, bylaws,
etc., §79-17-33.**

Name, §79-17-9.

Powers, §§79-17-25, 79-17-37.

FEES.

Agricultural associations.

Articles of association and
incorporation, §79-17-13.

Agricultural cooperative marketing associations.

Filing articles of association,
§79-19-55.

Charitable organizations.

Registration prior to solicitations,
§79-11-503.

**Foreign investment trusts,
§79-15-135.**

Investment trusts.

Foreign investment trusts, §79-15-135.

**Limited liability companies,
§79-29-1203.**

Limited partnerships, §79-14-1104.

FEES —Cont'd

Nonprofit corporations.

Filing fees, serving process upon
secretary of state, copying and
certifying copy of filed documents,
§79-11-109.

FIDUCIARIES.

**Charitable solicitations on behalf of
charitable organizations.**

Responsibility of person soliciting,
collecting or expending
contributions, §79-11-525.

Proxies.

Executing without order or direction of
court, §79-1-5.

FINES.

Charitable solicitations, §79-11-529.

Administrative or civil penalty,
§79-11-509.

Corporations.

Foreign corporation transacting
business without certificate of
authority, §79-4-15.02.

Interference with social, civil and
political rights of employees,
§79-1-9.

Nonprofit corporations.

Foreign corporation failing to secure
certificate of authority,
§79-11-365.

**Farm bureau, unlawful use of
words, §79-17-11.**

Foreign corporations.

Nonprofit corporations.

Failure to secure certificate of
authority, §79-11-365.

Transacting business without
certificate of authority,
§79-4-15.02.

Nonprofit corporations.

Foreign corporations failing to secure
certificate of authority, §79-11-365.

FISH AND GAME.

Aquaculture.

General provisions, §§79-22-1 to
79-22-35.

Cooperative marketing associations.

Fresh and salt water cooperatives,
§§79-21-51 to 79-21-67.

Generally, §§79-21-1 to 79-21-19.

Hybrid black stripe crappie.

Market feasibility study, §79-22-9.

Hybrid bream.

Market feasibility study, §79-22-9.

FISH COOPERATIVE MARKETING ASSOCIATIONS.

Aquatic products marketing associations, §§79-21-1 to 79-21-19.
Fresh and salt water cooperatives, §§79-21-51 to 79-21-67.

FISH FARMING.

Aquaculture act of 1988, §§79-22-1 to 79-22-35.

Cooperative marketing associations.
 Fresh and salt water cooperatives, §§79-21-51 to 79-21-67.
 Generally, §§79-21-1 to 79-21-19.

FOREIGN BUSINESS TRUSTS, §§79-16-1 to 79-16-35.

Activities not deemed constituting transacting business, §79-16-5.

Certificate of authority.

Application, §79-16-11.
 Contents of application, §79-16-11.
 Correcting false or inaccurate information, §79-16-15.
 Fees, §79-16-33.
 Issuance by secretary of state, §79-16-13.
 Name requirements for issuance of certificate, §79-16-7.
 Required to transact business in state, §79-16-5.
 Revocation, §§79-16-27, 79-16-29.
 Transacting business without, §79-16-31.

Certificate of withdrawal from state, §§79-16-23, 79-16-25.

Fee, §79-16-33.

Existing trusts, laws applicable, §79-16-35.

Fees, §79-16-33.

Laws applicable to trusts previously transacting business in state, §79-16-35.

Legislative reservation of power to amend or repeal, §79-16-3.

Mississippi registration of foreign business trusts act, §79-16-1.

Names, §79-16-7.

Changing name to one under which certificate of authority would not be granted, §79-16-9.

Registered agent, §79-16-17.

Changing, §79-16-19.
 Resignation, §79-16-19.
 Service of process, §79-16-21.

Registered office, §79-16-17.

Changing, §79-16-19.

FOREIGN BUSINESS TRUSTS

—Cont'd

Reservation by legislature of power to amend or repeal, §79-16-3.

Revocation of certificate of authority, §§79-16-27, 79-16-29.

Secretary of state.

Certificate of withdrawal, filing application with, issuance by, §§79-16-23, 79-16-25.
 Correcting statement to certificate of authority, filing with, §79-16-15.
 Delivery of application for certificate of authority, §79-16-11.
 Fees charged, §79-16-33.
 Issuance of certificate of authority, §79-16-13.
 Revocation of certificate of authority, §§79-16-27, 79-16-29.

Service of process, §79-16-21.

Transacting business without authority, §79-16-31.

Withdrawal from state.

Certificate, §§79-16-23, 79-16-25.
 Certificate of withdrawal.
 Fee, §79-16-33.

FOREIGN CORPORATIONS.

Activities not constituting transacting business, §79-4-15.01.

Annual report for secretary of state, §79-4-16.22.

Applicability of provisions to qualified foreign corporations, §79-4-17.02.

Business corporations generally, §§79-4-1.01 to 79-4-17.04.

Certificate of authority, §§79-4-15.01 to 79-4-15.10.

Amended certificate, §79-4-15.04.

Application, §79-4-15.03.

Form prescribed and furnished by secretary of state upon request, §79-4-1.21.

Consequences of transacting business without, §79-4-15.02.

Delivery to secretary of state, §79-4-15.03.

Effect, §79-4-15.05.

Fee for filing, §79-4-1.22.

Nonprofit corporations, §§79-11-363 to 79-11-371.

Required to transact business in state, §79-4-15.01.

FOREIGN CORPORATIONS —Cont'd

Certificate of authority —Cont'd

Revocation, §§79-4-15.30 to 79-4-15.33.

Appointment of secretary of state as agent for service of process, §79-4-15.31.

Cessation of authority to transact business, §79-4-15.31.

Failure to correct ground for revocation, §79-4-15.31.

Grounds, §79-4-15.30.

Nonprofit corporations, §§79-11-385 to 79-11-389.

Notice that grounds for revocation exist, service, §79-4-15.31.

Reinstatement of certificate, application to secretary of state, §79-4-15.32.

Appeal from denial, §79-4-15.33.

Certificate of withdrawal,

§79-4-15.20.

Civil penalty for transacting business without authority,

§79-4-15.02.

Consequences of transacting business without authority,

§79-4-15.02.

Defined, §79-4-1.40.

Derivative proceedings.

Generally, §§79-4-7.40 to 79-4-7.48.

Law governing proceedings involving foreign corporations, §79-4-7.47.

Directors and officers generally,

§§79-4-8.01 to 79-4-8.63.

Dissolution of corporation generally,

§§79-4-14.01 to 79-4-14.40.

Distinguishable name upon record,

§79-4-15.06.

Filing of documents generally,

§§79-4-1.20 to 79-4-1.29.

Indemnification of directors, officers, employees and agents,

§§79-4-8.50 to 79-4-8.59.

Laws governing proceedings involving, §79-4-7.47.

Membership in partnership, joint venture, syndicate, pool or other association transacting business in state, §79-4-15.01.

Name, §79-4-15.06.

Nonprofit corporations, §79-11-373.

Registration, §79-4-4.03.

Fees for filing documents, §79-4-1.22.

FOREIGN CORPORATIONS —Cont'd

Nonprofit corporations, §§79-11-363 to 79-11-389.

Activities not constituting transacting business within state, §79-11-363.

Amendment of certificate of authority, §79-11-369.

Applicability of provisions to existing foreign corporations authorized to transact business, §79-11-397.

Certificate of authority.

Amendment, §79-11-369.

Application, §79-11-367.

Secretary to prescribe and furnish form on request, §79-11-107.

Authorization of certificate, §79-11-371.

Civil penalty for failure to secure, §79-11-365.

Fee, §79-11-109.

Required to transact business, §79-11-363.

Revocation, §§79-11-385 to 79-11-389.

Rights and privileges of corporation having, §79-11-371.

Transacting business without certificate, §79-11-365.

Certificate of withdrawal, §79-11-383.

Secretary to prescribe and furnish form on request, §79-11-107.

Civil penalty for failure to secure certificate of authority, §79-11-365.

Distinguishable name upon records, §79-11-373.

Merger with domestic corporation, §79-11-327.

Name, §79-11-373.

Registration, §79-11-161.

Registered agent, §79-11-375.

Agent for service of process, notice or demand, §79-11-381.

Changing, §79-11-377.

Resignation, §79-11-379.

Registered office, §79-11-375.

Changing, §79-11-377.

Registration of name, §79-11-161.

Resignation of registered agent, §79-11-379.

Revocation of certificate of authority.

Appeals, §79-11-389.

Certificate of revocation, §79-11-387.

Commencement of proceeding by secretary of state, §79-11-385.

Grounds, §79-11-385.

FOREIGN CORPORATIONS —Cont'd

Nonprofit corporations —Cont'd

Service of process, §79-11-381.

Transacting business within state without certificate of authority, §79-11-365.

Withdrawal, §79-11-383.

Notice requirements under business corporation act, §79-4-1.41.

Officers generally, §§79-4-8.40 to 79-4-8.44.

Professional corporations, §§79-10-91 to 79-10-95.

Registered agent, §79-4-15.07.

Agent for service of process, notice or demand, §79-4-15.10.

Changing, §79-4-15.08.

Generally, §§79-4-5.01 to 79-4-5.04.

Nonprofit corporations, §§79-11-375 to 79-11-381.

Resignation, §79-4-15.09.

Registered office, §79-4-15.07.

Changing, §79-4-15.08.

Nonprofit corporations, §79-11-375.

Registering name, §79-4-4.03.

Fees for filing documents, §79-4-1.22.

Reports.

Annual report for secretary of state, §79-4-16.22.

Resignation of registered agent, §79-4-15.09.

Revocation of certificate of authority, §§79-4-15.30 to 79-4-15.33.

Appointment of secretary of state as agent for service of process, §79-4-15.31.

Cessation of authority to transact business, §79-4-15.31.

Failure to correct grounds within specified time, §79-4-15.31.

Grounds, §79-4-15.30.

Nonprofit corporations, §§79-11-385 to 79-11-389.

Notice to corporation that grounds exist, service, §79-4-15.31.

Reinstatement of certificate, application to secretary of state, §79-4-15.32.

Appeal from denial, §79-4-15.33.

Service of process, §79-4-15.10.

Nonprofit corporations, §79-11-381.

Revocation of certificate of authority.

Service of process on secretary of state, §79-4-15.31.

FOREIGN CORPORATIONS —Cont'd

Service of process —Cont'd

Withdrawal from state, §79-4-15.20.

Shareholders meetings generally, §§79-4-7.01 to 79-4-7.08.

Shares and distributions to shareholders generally,

§§79-4-6.01 to 79-4-6.40.

Validity of corporate acts not

affected by failure to obtain certificate, §79-4-15.02.

Voting entitlements of shares

generally, §§79-4-7.20 to 79-4-7.29.

Withdrawal from state, §79-4-15.20.

Application.

Form prescribed and furnished by secretary of state upon request, §79-4-1.21.

Nonprofit corporations, §79-11-383.

FOREIGN INVESTMENT TRUSTS.

Activities not constituting

transacting business in state, §79-15-101.

Amendment of certificate of

authority, §79-15-123.

Certificate of authority.

Amendments, §79-15-123.

Application, §79-15-109.

Authorization of certificate, §79-15-113.

Contents of application, §79-15-109.

Delivery to secretary of state, §79-15-111.

Failure to obtain, §79-15-133.

Fee, §79-15-135.

Issuance, §79-15-111.

Name, requirements for issuance of certificate, §79-15-105.

Required to transact business in state, §79-15-101.

Revocation.

Causes, §79-15-129.

Procedure, §79-15-131.

Certificate of withdrawal from state,

§§79-15-125, 79-15-127.

Fee, §79-15-135.

Declaration of trust.

Amendment, filing with secretary of state, §79-15-121.

Delivery to secretary of state, §79-15-111.

Defined, §79-15-3.

Existing trusts.

Law applicable to, §79-15-139.

FOREIGN INVESTMENT TRUSTS

—Cont'd

Failure to obtain certificate of authority, §§79-15-133.

Fees, §§79-15-135.

Investment trusts generally, §§79-15-1 to 79-15-29.

Law applicable to existing trusts, §§79-15-139.

Name, §§79-15-105.

Changing name to one under which certificate of authority would not be granted, §§79-15-107.

Registered agent, §§79-15-115.

Changing, §§79-15-117.

Resignation, §§79-15-117.

Service of process on, §§79-15-119.

Registered office, §§79-15-115.

Changing, §§79-15-117.

Revocation of certificate of authority, §§79-15-129, 79-15-131.

Rights and responsibilities similar to domestic trusts, §§79-15-103.

Right to transact business upon issuance of certificate, §§79-15-113.

Secretary of state.

Appointment as agent for service of process, notice or demand, §§79-15-119.

Certificate of withdrawal, filing, issuance, §§79-15-125, 79-15-127.

Delivery of certificate of authority and declaration of trust to, §§79-15-111.

Disbursement of funds collected under provisions, §§79-15-137.

Fees charged, §§79-15-135.

Filing amendment of declaration of trust, §§79-15-121.

Service of process, §§79-15-119.

Withdrawal.

Certificate of withdrawal, §§79-15-125, 79-15-127.

Fee, §§79-15-135.

FOREIGN LIMITED LIABILITY COMPANIES, §§79-29-1001 to 79-29-1010.

Actions by attorney general against companies violating provisions, §§79-29-1009.

Acts not constituting transacting business, §§79-29-1008.

Derivative proceedings.

Applicability of provisions to, §§79-29-1107.

FOREIGN LIMITED LIABILITY COMPANIES —Cont'd

False signing of documents, §§79-29-1010.

Law governing, §§79-29-1001.

Professional limited liability companies, §§79-29-924 to 79-29-926.

Registration, §§79-29-1002 to 79-29-1007.

FOREIGN LIMITED LIABILITY PARTNERSHIPS, §§79-13-1101 to 79-13-1105.

FOREIGN LIMITED PARTNERSHIPS, §§79-14-901 to 79-14-909.

Laws governing, §§79-14-901.

Names, §§79-14-904.

Registration.

Cancellation, §§79-14-906.

Correcting false facts or inaccurate information, §§79-14-905.

Required before transacting business, §§79-14-902.

Transacting business without, §§79-14-907.

Restraining transacting business in state without registration.

Actions by attorney general, §§79-14-908.

Service of process.

Appointment of secretary of state as registered agent for service.

Transacting business without registration, §§79-14-907.

Signatures on documents, §§79-14-909.

Transacting business without registration, §§79-14-907.

FOREIGN NONPROFIT CORPORATIONS, §§79-11-363 to 79-11-389.

FOREIGN PROFESSIONAL CORPORATIONS.

Certificates of authority, §§79-10-91 to 79-10-95.

FRACTIONAL SHARES.

Business corporation act, §§79-4-6.04.

Professional corporations.

Issuance, §§79-10-31.

FRANCHISES.

Corporations.

Property and franchise of corporation sold to satisfy judgment, §§79-1-13.

Redemption of franchise, §§79-1-15.

FRATERNAL BENEFIT SOCIETIES.

Regulation of charitable solicitations.

Exemption when solicitation made solely by membership, §79-11-505.

FRAUD.

Charitable organizations.

Soliciting funds in state, §79-11-519.

FREEDOM OF INFORMATION.

Charitable solicitations by charitable organizations in state.

Confidentiality of information in possession of, filed with or obtained by secretary of state in connection with investigation or examination, §79-11-527.

FRESH AND SALT WATER PRODUCTS CO-OPERATIVES,
§§79-21-51 to 79-21-67.

FUND-RAISING COUNSEL.

Annual report, §79-11-513.

Bond, §79-11-513.

Contract between fund-raiser and charitable organization.

Requirements, filing with secretary of state, §79-11-515.

Defined, §79-11-501.

Registration, §79-11-513.

Regulation of charitable solicitations generally,
§§79-11-501 to 79-11-529.

G

GAME AND FISH.

Hybrid black stripe crappie.

Market feasibility study, §79-22-9.

Hybrid bream.

Market feasibility study, §79-22-9.

GIFTS.

Charitable gift annuities, §§79-11-651 to 79-11-661.

Charitable solicitations.

Regulation generally, §§79-11-501 to 79-11-529.

Corporations.

Power to make, §79-1-3.

Endowment funds.

Management of institutional funds generally, §§79-11-601 to 79-11-617.

GIFTS —Cont'd

Institutional funds.

Management generally, §§79-11-601 to 79-11-617.

Management of institutional funds,
§§79-11-601 to 79-11-617.

Nonprofit corporations.

Charitable, scientific or educational purposes, §79-11-151.

GOOD FAITH.

Corporations.

Nonprofit corporations.

Duty of director, §79-11-267.

Directors of corporation, §§79-4-8.30, 79-4-8.31.

Limited liability companies.

Duties of managers to company,
§79-29-402.

Nonprofit corporations.

Duty of officer to act in, §79-11-275.

Officer of corporation, §79-4-8.42.

GRANTS.

Charitable solicitations.

Regulation generally, §§79-11-501 to 79-11-529.

GUARDIAN AD LITEM.

Claims against dissolved corporation.

Security for payment determination.

Appointment for claimants whose identities unknown, §79-4-14.08.

Corporations.

Claims against dissolved corporation.

Security for payment determination.

Appointment for claimants whose identities unknown,
§79-4-14.08.

GUARDIAN AND WARD.

Limited partnerships.

Power of guardian to exercise rights of incompetent partner, §79-14-705.

Proxies.

Executing without order or direction of court, §79-1-5.

H

HINDS COUNTY.

Chancery court of first judicial district.

Appeal by corporation from denial of reinstatement following administrative dissolution,
§79-4-14.23.

HINDS COUNTY —Cont'd

Chancery court of first judicial district —Cont'd

Appeal from denial of reinstatement of certificate of authority after revocation.

Foreign corporations, §79-4-15.33.

HISTORICAL SOCIETIES.

Regulation of charitable solicitations.

Exemption when solicitation made solely by membership, §79-11-505.

HOLD HARMLESS CLAUSES.

Corporate directors, officers, employees or agents.

Indemnification generally, §§79-4-8.50 to 79-4-8.59.

Limited liability companies.

Indemnifying and holding harmless member, manager or other person, §79-29-110.

Limited partnerships, §79-14-108.

HOSPITALS AND OTHER HEALTH CARE FACILITIES.

Religious society, ecclesiastical body or congregation's power to own, §79-11-33.

HUMANE SOCIETIES.

Regulation of charitable solicitations.

Exemption from provisions, §79-11-505.

I

IMMUNITY.

Charitable solicitations, §79-11-526.

IMPORTED TILAPIA.

Labeling requirements, §79-22-35.

INCOME TAX.

Investment trusts.

Income taxed as business corporation, §79-15-25.

Limited liability companies.

Classification as entity for purposes of, §79-29-112.

INCOMPETENCY.

Limited liability companies.

Power of personal representative of incompetent member to exercise rights, §79-29-705.

INCOMPETENCY —Cont'd

Limited partnerships.

Power of personal representative of incompetent partner to exercise rights, §79-14-705.

INCORPORATION.

Business corporations.

Generally, §§79-4-1.01 to 79-4-17.04.

Nonprofit corporations, §79-11-135.

Organizational meetings, §79-4-2.05.

Professional corporations.

Election of professional corporation status, §79-10-11.

Small business investment companies, §79-7-1.

INDEMNIFICATION.

Corporations.

Directors, officers, employees or agents, §§79-4-8.50 to 79-4-8.59.

Nonprofit corporations.

Directors, officers, employees or agents, §79-11-281.

Limited liability companies.

Members, managers or other persons made party to proceeding, §79-29-110.

Limited partnerships, §79-14-108.

Nonprofit corporations.

Director, officer, employee or agent, §79-11-281.

INFORMALITY IN ORGANIZATION OF CORPORATION.

Not defense to suit against corporation, §79-1-7.

INJUNCTIONS.

Agricultural cooperative marketing associations.

Breach of marketing contract or bylaws, §79-19-33.

Charitable organizations.

Solicitation violations, §79-11-509.

Corporations.

Nonprofit corporations.

Court ordered dissolution, §§79-11-357, 79-11-359.

Shareholder's proceeding to enjoin power to act, §79-4-3.04.

Foreign limited partnerships.

Transacting business without registration, §79-14-908.

Limited liability companies.

Enforcement of limited liability agreement, §79-29-306.

INJUNCTIONS —Cont'd

Nonprofit corporations.

Attorney general action brought by private citizen, §79-11-133.

Court ordered dissolution.

Powers of court in proceeding, §§79-11-357, 79-11-359.

INSPECTIONS.

Corporate records by directors, §79-4-16.05.

Corporate records by shareholders, §§79-4-16.02 to 79-4-16.04.

Nonprofit corporations, §§79-11-285 to 79-11-289.

Shareholder inspection of records of corporation, §§79-4-16.02 to 79-4-16.04.

INSTITUTIONAL FUNDS.

Uniform management of institutional funds act, §§79-11-601 to 79-11-617.

INSURANCE.

Charitable gift annuities.

Issuance not engaging in insurance, §79-11-653.

Corporations.

Directors, officers, employees or agents.

Corporations purchasing and maintaining on behalf of, §§79-4-8.57, 79-11-281.

Nonprofit corporations.

Purchasing and maintaining on behalf of director, officer, employee or agent, §79-11-281.

Nonprofit corporations.

Purchasing and maintaining on behalf of director, officer, employee or agent, §79-11-281.

INTERFERENCE.

Corporations.

Social, civil and political rights of employees, §79-1-9.

INTERVENTION.

Attorney general.

Nonprofit corporations.

Proceedings authorized to be brought by attorney general but commenced by another, §79-11-133.

INTERVENTION —Cont'd

Nonprofit corporations.

Proceedings authorized to be brought by attorney general but commenced by another, §79-11-133.

INVESTIGATIONS.

Charitable organizations soliciting funds in state.

Investigations by attorney general, §79-11-521.

INVESTMENT COMPANIES.

Investments by governing board of institutional funds, §79-11-607.

Small business investment companies, §§79-7-1 to 79-7-7.

INVESTMENT PARTNERSHIPS.

Investments by governing board of institutional funds, §79-11-607.

INVESTMENTS.

Governing board of institutional funds.

Powers and duties, §79-11-607.

Institutional funds.

Powers and duties of governing board, §79-11-607.

Management of institutional funds.

Powers and duties of governing board, §79-11-607.

INVESTMENT TRUSTS, §§79-15-1 to 79-15-29.

Actions against trust at law or in equity, §79-15-23.

Actions by or against as separate and district entity under name and declaration of trust, §79-15-23.

Amendment of declaration, §79-15-17.

Applicability of other laws, §79-15-29.

Certificates of beneficial interest.

Beneficial ownership evidenced by, §79-15-11.

Issuance, §79-15-11.

Liability of holders, §79-15-13.

Personal or individual liability of holders, §79-15-13.

Transferability, §79-15-11.

Content requirements for declaration, §79-15-7.

Continued for indefinite period, §79-15-21.

INVESTMENT TRUSTS —Cont'd

Control over management, operation, etc.

Trustee's powers, §79-15-9.

Corporate franchise tax.

Trust deemed domestic corporation for purposes of, §79-15-25.

Debts and other obligations incurred.

Sued at law or in equity, §79-15-23.

Declaration of trust.

Amendments, §79-15-17.

Content requirements, §79-15-7.

Election and removal of trustees, providing for, §79-15-15.

Establishing, §79-15-5.

Recording, §79-15-19.

Defined, §79-15-3.

Dissolving investment trusts.

Holders of certificates of beneficial interest, §79-15-21.

Domicile in state, trust deemed, §79-15-23.

Establishing, §79-15-5.

Foreign investment trusts,

§§79-15-101 to 79-15-139.

Income taxed as if trust business corporation, §79-15-25.

Joinder of trustees.

Individual or holders of certificates of beneficial interest in actions.

Not necessary to join, §79-15-23.

Legal title to property held by trustee, §79-15-9.

Liability of holders of certificates of beneficial interest, §79-15-13.

Liability of trustees, §79-15-9.

Mississippi investment trust law, §79-15-1.

Negligence of trustees.

Actions for damages, §79-15-23.

Prior rights, duties, penalties and proceedings.

Effect of chapter on, §79-15-27.

Purposes, §79-15-5.

Recording declaration, §79-15-19.

Repeal of other laws, §79-15-29.

Restraints on alienation.

Not deemed as violating, §79-15-21.

Rule against perpetuities.

Not deemed invalid as violating, §79-15-21.

Service of process.

Trustees severally agents for, §79-15-23.

INVESTMENT TRUSTS —Cont'd

Termination by affirmative votes of holders of certificates of beneficial interest.

Declaration of trust providing for, §79-15-21.

Trustees.

Chairman, election, §79-15-9.

Death, resignation or removal.

Election of successor trustees, §79-15-15.

Execution of deeds, notes and other written instruments.

Designation of trustee, §79-15-9.

Liability to third person, §79-15-9.

Natural persons or residence of state.

Requirement of at least one trustee during existence of trust, §79-15-5.

Officers, election, §79-15-9.

Powers and liabilities, §79-15-9.

Qualifications, §79-15-5.

J

JOINDER OF PARTIES.

Investment trust, actions against.

Trustees or holders of certificates of beneficial interest need not be joined, §79-15-23.

JOINT AND SEVERAL LIABILITY.

Nonprofit corporations.

Acting on behalf of corporation where incorporation not occurred, §79-11-141.

Persons acting on behalf of corporation not yet incorporated, §79-4-2.04.

JUDGMENT CREDITORS.

Limited liability companies.

Creditor's right to charge interest of member, §79-29-703.

Limited partnerships.

Creditor's charge against partnership interest, §79-14-703.

Nonprofit corporations.

Action by creditor to reach liability of member to corporation, §79-11-185.

Court ordered dissolution.

Creditors' claim reduced to judgment and execution returned unsatisfied, §79-11-355.

JUDGMENTS AND DECREES.

Corporations.

Sale of property and franchise to satisfy, §79-1-13.

Redemption of franchise by stockholders at time of sale, §79-1-15.

Satisfaction of judgment.

Corporate property and franchise sold to satisfy, §79-1-13.

Redemption of franchise, §79-1-15.

JUDICIAL DISSOLUTION.

Corporations, §§79-4-14.30 to 79-4-14.34.

Nonprofit corporations, §§79-11-355 to 79-11-361.

Professional corporations, §79-10-85.

L

LABELS.

Tilapia products sold for human consumption, §79-22-35.

LEASES.

Aquaculture.

Leasing waters for aquaculture or production of aquatic products, §79-22-23.

Corporations.

Amendment of articles of incorporation.

Appraisal rights* of shareholders, §§79-4-13.01 to 79-4-13.31.

Disposition of assets.

Appraisal rights of shareholders, §§79-4-13.01 to 79-4-13.31.

Not requiring shareholder approval, §79-4-12.01.

Requiring shareholder approval, §79-4-12.02.

Nonprofit corporations.

All or substantially all property of corporation.

In regular course of business, §79-11-329.

Not in regular course of business, §79-11-331.

Nonprofit corporations.

All or substantially all property.

In regular course of business, §79-11-329.

Not in regular course of business, §79-11-331.

LEVIES.

Corporate directors, officers, employees or agents.

Corporations purchasing and maintaining on behalf of, §79-4-8.57.

Nonprofit corporations.

Purchasing and maintaining on behalf of director, officer, employee or agent, §79-11-281.

Nonprofit corporations.

Purchasing and maintaining on behalf of director, officer, employee or agent, §79-11-281.

LIABILITY INSURANCE.

Corporations.

Directors, officers, employees or agents, §79-4-8.57.

LICENSES AND PERMITS.

Aquaculture.

Marketing and cultivation permits generally, §§79-22-1 to 79-22-35.

LIENS.

Partnerships.

Partner's transferable interests subject to charging order, §79-13-504.

LIMITATION OF ACTIONS.

Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

Corporations.

Appraisal rights of shareholders.

Court action to determine fair value of shares, §79-4-13.30.

Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

Director liability for unlawful distributions, §79-4-8.33.

Nonprofit corporations.

Claims against dissolved corporations, §§79-11-343, 79-11-345.

Dissolution of corporation.

Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

Distributions to shareholders.

Director liability, §79-4-8.33.

Limited liability companies.

Claims against dissolved company.

Known claims, §79-29-806.

Unknown claims, §79-29-807.

LIMITATION OF ACTIONS —Cont'd

Limited partnerships.

Liability of partner upon return of contribution, §79-14-608.

Nonprofit corporations.

Claims against dissolved corporations, §§79-11-343, 79-11-345.

Member expelled, suspended or terminated.

Challenging for defective notice, §79-11-189.

Unlawful distributions to shareholders.

Director liability, §79-4-8.33.

LIMITED LIABILITY COMPANIES.

Acts of managers or members

binding company, §79-29-303.

Dissolution, §79-29-804.

Admission of members, §79-29-301.

Agency power of members and managers, §79-29-303.

Dissolution, §79-29-804.

Agreement to be obligated personally, §79-29-305.

Allocation of profits and losses, §79-29-503.

Amendment to certificate of formation, §79-29-202.

Appraisal rights of members and owners, §79-29-214.

Assignment of company interest, §79-29-702.

Right of assignee to become member, §79-29-704.

Authorization to carry on lawful business, purpose or activity, §79-29-108.

Authorization to use name not distinguishable upon records.

Application to secretary of state, §79-29-104.

Bar to claim against dissolved company, §§79-29-806, 79-29-807.

Best interest of company, manager's duty, §79-29-402.

Captions to provisions for purposes of convenience and not controlling, §79-29-1201.

Care of ordinary prudent person, manager's duty, §79-29-402.

Ceasing to be member.

Events, §79-29-307.

Certificate of dissolution or cancellation, §79-29-204.

Fees, §79-29-1203.

LIMITED LIABILITY COMPANIES

—Cont'd

Certificate of dissolution or cancellation —Cont'd

Filing with secretary of state, §79-29-207.

Signing, §79-29-205.

Court ordered signing, §79-29-206.

Certificate of formation, §79-29-201.

Amendment, §79-29-202.

Copy to be kept at principal place of business, §79-29-107.

Fees, §79-29-1203.

Filing with secretary of state, §79-29-207.

Formation, §79-29-201.

Notice that entity formed limited liability company, §79-29-208.

Restated certificates, §79-29-203.

Signing, §79-29-205.

Court ordered signing, §79-29-206.

Changing registered office or registered agent, §79-29-106.

Claims against dissolved company.

Known claims, §79-29-806.

Unknown claims, §79-29-807.

Classes or groups of members, certificate providing for, §79-29-304.

Conclusive evidence of formation.

Copy of certificate of formation, §79-29-201.

Conduct standards for managers, §79-29-402.

Contributions of members.

Enforceability of promise by member to make contribution, §79-29-502.

Method of making, §79-29-501.

Obligation to perform promise of contribution, §79-29-502.

Statement to be kept by company, §79-29-107.

Court ordering dissolution, §79-29-802.

Creditor of company with respect to distribution.

Status of member on entitlement to receive distribution, §79-29-604.

Creditor's right to charge company interest, §79-29-703.

Death of member.

Power of estate to exercise member's rights, §79-29-705.

Definitions, §79-29-103.

Professional limited liability companies, §79-29-902.

LIMITED LIABILITY COMPANIES

—Cont'd

Delegation of responsibility for managing to manager.

Certificate of formation providing, §79-29-401.

Derivative proceedings, §§79-29-1101 to 79-29-1107.

Applicability to foreign limited liability companies, §79-29-1107.

Demand by member, §79-29-1102.

Determination proceeding not in best interest of company, §79-29-1104.

Discontinuance or settlement, §79-29-1105.

Dismissal, §79-29-1104.

Expenses, payment, §79-29-1106.

Fair and adequate representation of interest of company, §79-29-1101.

Inquiry into allegations, stay, §79-29-1103.

Members commencing or maintaining proceedings, requirements, §79-29-1101.

Panel of independent persons.

Determining whether proceeding in best interest of company, §79-29-1104.

Proceeding not in best interest of company.

Dismissal, §79-29-1104.

Stay of proceedings on inquiry into allegations, §79-29-1103.

Written demand by member, §79-29-1102.

Dissociation of members.

Distribution upon, §79-29-602.

Events causing, §79-29-307.

Dissolution, §§79-29-801 to 79-29-807.

Agency power of managers or members afterwards, §79-29-804.

Certificate of dissolution, §79-29-204.

Fees, §79-29-1203.

Filing with secretary of state, §79-29-207.

Signing, §79-29-205.

Court ordered signing, §79-29-206.

Claims against dissolved company.

Known claims, §79-29-806.

Unknown claims, §79-29-807.

Court ordered dissolution, §79-29-802.

Distribution of assets, §79-29-805.

Events causing.

Judicial dissolution, §79-29-802.

Nonjudicial dissolution, §79-29-801.

LIMITED LIABILITY COMPANIES

—Cont'd

Dissolution —Cont'd

Judicial dissolution, §79-29-802.

Nonjudicial dissolution, §79-29-801.

Statement of events upon happening of which limited liability company dissolved, §79-29-107.

Winding up, §79-29-803.

Distinguishable name upon records, §79-29-104.

Distributions.

Allocation among members, §79-29-504.

Assets after dissolution, §79-29-805.

Creditor of company with respect to distribution.

Status of member on becoming entitled to receive, §79-29-604.

In kind distribution, §79-29-603.

Interim distributions, §79-29-601.

Limitations, §79-29-605.

Upon dissociation, §79-29-602.

Wrongful distribution, liability, §79-29-606.

Duties of managers to company, §79-29-402.

Election of managers by members, §79-29-401.

Eliminating or limiting liability of member or manager, §79-29-403.

Enforcement of limited liability agreement, §79-29-306.

Events causing person to cease to be member, §79-29-307.

Fees charged by secretary, §79-29-1203.

Filing required certificates with secretary of state, §79-29-207.

Foreign limited liability companies, §§79-29-1001 to 79-29-1010.

Actions by attorney general to restrain violations, §79-29-1009.

Acts not constituting transacting business, §79-29-1008.

Cancellation of registration, §79-29-1006.

Correcting false information or inaccurate information on registration, §79-29-1005.

Derivative proceedings.

Applicability of provisions to, §79-29-1107.

False signing of documents, §79-29-1010.

LIMITED LIABILITY COMPANIES

—Cont'd

Foreign limited liability companies

—Cont'd

Law governing, §79-29-1001.

Name, §79-29-1004.

Professional limited liability companies, §§79-29-924 to 79-29-926.

Registration, §79-29-1002.

Cancellation, §79-29-1006.

Correcting false information or inaccurate information, §79-29-1005.

Fees, §79-29-1203.

Issuance by secretary of state, §79-29-1003.

Required before transacting business, §79-29-1002.

Transacting business without registering, §79-29-1007.

Transacting business without registering, §79-29-1007.

Freedom of contract and enforceability of company agreements.

Maximum effect given by chapter, §79-29-1201.

Gender terms applicable to all genders, §79-29-1201.

Good faith, duty of managers, §79-29-402.

Holding harmless member, manager or other person made party to proceeding, §79-29-110.

Income tax purposes.

Classification as entity for purposes of, §79-29-112.

Incompetency of member.

Power of representative to exercise rights, §79-29-705.

Indemnification of member, manager or other person made party to proceeding, §79-29-110.

Information member may demand from company, §79-29-308.

Injunctions.

Enforcement of limited liability agreement, §79-29-306.

In kind distribution, §79-29-603.

Inspection and copying records, members' rights, §79-29-308.

Judgment creditor's right to charge company interest of member, §79-29-703.

LIMITED LIABILITY COMPANIES

—Cont'd

Judicial dissolution, §79-29-802.

Legislative reservation of power to amend or repeal, §79-29-102.

Lending money to company.

Members or managers, §79-29-109.

Liability for wrongful distribution, §79-29-606.

Liability of members, §79-29-305.

Limitation of liability of members and managers, §79-29-403.

Limitations on distribution, §79-29-605.

Limited liability company agreement, §79-29-306.

List of members and managers.

Records to be kept at principal place of business, §79-29-107.

Majority vote of members for taking action, §79-29-304.

Management of company.

Manager as agent of limited liability company, §79-29-303.

Manager or managers, §79-29-401.

Members, §79-29-302.

Merger, §79-29-209.

Abandonment of merger, §79-29-213.

Action on plan of merger, §79-29-210.

Appraisal rights, §79-29-214.

Certificate of merger, §79-29-211.

Effect, §79-29-212.

Filing certificates with secretary of state, §79-29-207.

Professional limited liability companies, §79-29-921.

Methods of making contributions by members, §79-29-501.

Mississippi liability company act, §79-29-101.

Name, §79-29-104.

Reservation of name, §79-29-105.

Notice that entity formed limited liability company.

Certificate of formation deemed, §79-29-208.

Notice to claimants with claims against dissolved company.

Known claims, §79-29-806.

Unknown claims, §79-29-807.

Personal liability of member, §79-29-305.

Personal property, interest deemed, §79-29-701.

Powers, §79-29-108.

LIMITED LIABILITY COMPANIES

—Cont'd

- Professional limited liability companies**, §§79-29-901 to 79-29-933.
- Proper parties to proceedings by or against company.**
 - Member not proper party, §79-29-305.
- Records to be kept**, §79-29-107.
- Registered agent**, §79-29-106.
 - Agent for service of process, notice or demand, §79-29-111.
- Registered office**, §79-29-106.
- Removal of managers**, §79-29-401.
- Reservation of name**, §79-29-105.
- Reservation of power to amend or repeal**, §79-29-102.
- Resignation of registered agent**, §79-29-106.
- Restated certificate of formation**, §79-29-203.
 - Filing with secretary, §79-29-207.
- Secretary of state.**
 - Authorization to use name not distinguishable upon records, application, §79-29-104.
 - Certificate of formation, delivery to, §79-29-201.
 - Amendment to certificate, §79-29-202.
 - Fees charged, §79-29-1203.
 - Filing of certificates with secretary generally, §79-29-207.
 - Powers reasonably necessary to perform duties, §79-29-1204.
 - Reservation of name, application, §79-29-105.
 - Service of process on secretary, §79-29-111.
- Service of process**, §79-29-111.
- Severability of provisions**, §79-29-1202.
- Sharing of distributions**, §79-29-504.
- Sharing of profits and losses**, §79-29-503.
- Signing of certificates.**
 - Court ordered signature, §79-29-206.
 - Required by chapter, §79-29-205.
- Singular to include plural**, §79-29-1201.
- Specific company property, member without right to**, §79-29-701.
- Specified class or group of members, certificate providing for**, §79-29-304.

LIMITED LIABILITY COMPANIES

—Cont'd

- Standards of conduct for managers**, §79-29-402.
 - Statute of limitations.**
 - Claim against dissolved company, §§79-29-806, 79-29-807.
 - Statutes and derogation of common law strictly construed.**
 - Inapplicability of rule, §79-29-1201.
 - Transacting business with company.**
 - Members or managers, §79-29-109.
 - Vacancy occurring in office of manager.**
 - Members filling, §79-29-401.
 - Vesting of management powers in members**, §79-29-302.
 - Voting entitlement of members**, §79-29-304.
 - When person becomes member**, §79-29-301.
 - Winding up of affairs**, §79-29-803.
 - Certificate of cancellation, §79-29-204.
 - Fees, §79-29-1203.
 - Filing with secretary of state, §79-29-207.
 - Signing, §79-29-205.
 - Court ordered signing, §79-29-206.
 - Distribution of assets, §79-29-805.
 - Wrongful distribution, liability**, §79-29-606.
- LIMITED LIABILITY PARTNERSHIPS.**
- Foreign limited liability partnerships**, §§79-13-1001 to 79-13-1105.
- LIMITED PARTNERSHIPS.**
- Action in right of limited partnership brought by limited partner.**
 - Derivative actions, §§79-14-1001 to 79-14-1004.
 - Additional general partners, admission**, §79-14-401.
 - Additional limited partners, admitting**, §79-14-301.
 - Admission of general partners**, §79-14-401.
 - Admission of limited partners**, §79-14-301.
 - Allocation of profits and losses**, §79-14-503.
 - Amended and restated certificate of limited partnership**, §79-14-210.

LIMITED PARTNERSHIPS —Cont'd

Amendment of certificate of partnership, §79-14-202.

Assignment of partnership interest, §79-14-702.

Assignee becoming limited partner, §79-14-704.

Authorization to use name not distinguishable upon records.

Application to secretary of state, §79-14-102.

Breach of partnership agreement by withdrawing partner.

Damages, §79-14-602.

Business transactions of partner with partnership, §79-14-107.

Cancellation.

Certificate of cancellation, §79-14-203.

Carrying on business that partnership without limited partnerships may carry on, §79-14-106.

Cases not provided for in chapter, rules, §79-14-1107.

Cash contributed by partner.

Partnership to keep statement, §79-14-105.

Ceasing to be general partner, events causing, §79-14-402.

Certificate of cancellation.

Delivery to limited partners, §79-14-209.

Execution, §79-14-204.

Court order requiring, §79-14-205.

False statement, liability, §79-14-207.

Fee, §79-14-1104.

Filing in office of secretary of state, §79-14-206.

Certificate of dissolution, §79-14-203.

Delivery to limited partners, §79-14-209.

Execution, §79-14-204.

Court order requiring, §79-14-205.

False statement, liability, §79-14-207.

Fees, §79-14-1104.

Filing in office of secretary, §79-14-206.

Certificate of limited partnership.

Amendment, §79-14-202.

Event requiring amendment, §79-14-202.

Content requirement, §79-14-201.

Copy of certificate conclusive evidence of formation, §79-14-201.

Copy to be kept by partnership, §79-14-105.

LIMITED PARTNERSHIPS —Cont'd

Certificate of limited partnership —Cont'd

Delivery to limited partners, §79-14-209.

Execution, §79-14-204.

Court order requiring, §79-14-205.

False statement, liability, §79-14-207.

Fees, §79-14-1104.

Filing in office of secretary generally, §79-14-206.

Formation of partnership at date and time of filing, §79-14-201.

Notice that partnership limited partnership, §79-14-208.

Required to be executed and filed with secretary of state, §79-14-201.

Restated certificates, §79-14-210.

Classes or groups of general partner, §79-14-405.

Classes or groups of limited partners, providing for, §79-14-302.

Consolidation, §79-14-211.

Construed to effect general purpose of uniform law, §79-14-1101.

Contributions by general partner, §79-14-404.

Contributions by partners generally.

Enforcement of promise to contribute, §79-14-502.

Form in which contribution may be made, §79-14-501.

Obligation upon promise to contribute, §79-14-502.

Partnership to keep statements, §79-14-105.

Return of contribution, liability upon, §79-14-608.

Control of business, limited partner participating in.

Activities not deemed participation, §79-14-303.

Corporation as partner dissolved or terminated.

Power of legal representative or successor to exercise rights, §79-14-705.

Court ordered dissolution, §79-14-802.

Court order requiring execution of required certificate, §79-14-205.

Creditors rights and remedies.

Judgment creditor's charge against partnership interest, §79-14-703.

LIMITED PARTNERSHIPS —Cont'd

Creditors rights and remedies

—Cont'd

Status of partner on entitlement to receive distribution, §79-14-606.

Damages for breach of partnership agreement by withdrawing partner, §79-14-602.

Death of partner.

Power of estate to exercise partner's rights, §79-14-705.

Definitions, §79-14-101.

Derivative actions, §§79-14-1001 to 79-14-1004.

Action in right of limited partnerships, §79-14-1001.

Complaints, §79-14-1003.

Expenses, §79-14-1004.

Limited partner's right to bring action, §79-14-1001.

Plaintiff required to be partner, §79-14-1002.

Requirements for proper plaintiff, §79-14-1002.

Dissolution.

Certificate of dissolution, §79-14-203.

Delivery to limited partners, §79-14-209.

Execution, §79-14-204.

Court order requiring, §79-14-205.

False statement, §79-14-207.

Fee, §79-14-1104.

Filing in office of secretary of state, §79-14-206.

Court ordered dissolution, §79-14-802.

Distribution of assets upon winding up, §79-14-804.

Events causing dissolution, §79-14-801.

Judicial dissolution, §79-14-802.

Nonjudicial dissolution.

Events causing, §79-14-801.

Winding up of affairs, §79-14-803.

Distinguishable name upon records, §79-14-102.

Distributions.

Before withdrawal and before dissolution and winding up, §79-14-601.

Creditors' rights and remedies.

Status of partner on entitlement to receive distribution, §79-14-606.

General partner sharing in, §79-14-404.

In kind distributions, §79-14-605.

LIMITED PARTNERSHIPS —Cont'd

Distributions —Cont'd

Interim distributions, §79-14-601.

Liabilities exceeding fair value of partnership property, §79-14-607.

Limitations, §79-14-607.

Right to distribution, §79-14-606.

Sharing distribution, §79-14-504.

Upon withdrawal, §79-14-604.

Winding up of affairs, §79-14-804.

Erroneous belief of person that person limited partner, §79-14-304.

Events causing dissolution, §79-14-801.

Judicial dissolution, §79-14-802.

Events causing person to cease to be general partner, §79-14-402.

Events requiring amendment to certificate of limited partnership, §79-14-202.

Execution of required certificates, §79-14-204.

Court order requiring, §79-14-205.

Existing partnerships prior to effective date of provisions.

Status, §79-14-1106.

Fees charged by secretary of state, §79-14-1104.

Filing of certificates required in office of secretary of state, §79-14-206.

Financial statements.

Copies to be kept by partnership, §79-14-105.

Foreign limited partnerships.

Laws governing, §79-14-901.

Merger or consolidation with domestic limited partnership, §79-14-211.

Name, §79-14-904.

Registration.

Cancellation, §79-14-906.

Correcting false statements or inaccurate statements, §79-14-905.

Fee, §79-14-1104.

Issuance by secretary of state, §79-14-903.

Required before transacting business, §79-14-902.

Transacting business without, §79-14-907.

Restraining partnership from transacting business in state.

Actions by attorney general, §79-14-908.

LIMITED PARTNERSHIPS —Cont'd

Foreign limited partnerships

—Cont'd

Secretary of state as registered agent for service of process.

Transacting business without registration, §79-14-907.

Signatures on documents, §79-14-909.

Transacting business without registration, §79-14-907.

Form of contributions by partners, §79-14-501.

General powers and liabilities of general partner, §79-14-403.

Income tax returns and reports.

Copy to be kept by partnership, §79-14-105.

Incompetency of partner.

Power of personal representative to exercise partner's rights, §79-14-704.

Indemnification and holding harmless partner, §79-14-108.

Information.

Rights of limited partner, §79-14-305.

In kind distributions, §79-14-605.

Inspection and copying of records, §79-14-105.

Interim distributions, §79-14-601.

Judgment creditor's charge against partnership interest, §79-14-703.

Lending of money by partner to partnership, §79-14-107.

Liability of general partner, §79-14-403.

Liability of limited partner, §79-14-303.

Limitation period for liability upon return of contribution, §79-14-608.

Limited partner's liability, §79-14-303.

Person erroneously believing himself to be limited partner, §79-14-304.

Limited partner withdrawing, §79-14-603.

List of partners.

Records to be kept, §79-14-105.

Mergers, §79-14-211.

Mississippi limited partnership act, §79-14-1102.

Name, §79-14-102.

Foreign limited partnerships, §79-14-904.

Reservation of name, §79-14-103.

LIMITED PARTNERSHIPS —Cont'd

Nature of business, §79-14-106.

No interest in specific limited partnership property, §79-14-701.

Nonjudicial dissolution, §79-14-801.

Notice of withdrawal by general partner, §79-14-602.

Notice that partnership limited partnership.

Certificate of limited partnership on file in office of secretary of state, §79-14-208.

Office to be maintained in state, §79-14-104.

Participation in control of business.

Activities not deemed participation by limited partner, §79-14-303.

Partnership agreements.

Copies to be kept by partnership, §79-14-105.

Partnership interest.

Assignment, §79-14-702.

Right of assignee to become limited partner, §79-14-704.

Judgment creditor's charge, §79-14-703.

No interest in specific limited partnership property, §79-14-701.

Personal property, §79-14-701.

Personal property.

Partnership interest, §79-14-701.

Records to be kept, §79-14-105.

Registered agent for service of process, §79-14-104.

Change of address, certificate filed with secretary, §79-14-104.

Resignation, §79-14-104.

Repeal of provisions, §79-14-1105.

Reservation of name, §79-14-103.

Resignation of registered agent, §79-14-104.

Restated certificate of limited partnership, §79-14-210.

Fee, §79-14-1104.

Return of contribution, liability of partner, §79-14-608.

Rights and powers of general partner, §79-14-403.

Rules for cases not provided for in chapter, §79-14-1107.

Savings clause, §79-14-1106.

Secretary of state.

Agent for service of process.

Foreign limited partnership.

Transacting business without registration, §79-14-907.

LIMITED PARTNERSHIPS —Cont'd

Secretary of state —Cont'd

- Amended and restated or restated certificate of limited partnership, filing, §79-14-210.
- Application for registration by foreign limited partnership, filing, §79-14-902.
- Authorization to use name not distinguishable upon records, application, §79-14-102.
- Cancellation of registration by foreign limited partnership, certificate, §79-14-906.
- Certificate of dissolution or cancellation, filing, §79-14-203.
- Certificate of limited partnership, filing with secretary, §79-14-201.
- Amended certificate, §79-14-202.
- Fees charged by secretary, §79-14-1104.
- Filing of required certificates with secretary, §79-14-206.
- Issuance of registration for foreign limited partnership, §79-14-903.
- Reservation of name, application, §79-14-103.

Service of process.

- Foreign limited partnerships.
 - Appointment of secretary of state as registered agent for service.
 - Transacting business without registration, §79-14-907.
- Registered agent for service of process, §79-14-104.

Severability, §79-14-1103.

Sharing of distributions, §79-14-504.

Sharing of profits and losses, §79-14-503.

- General partner, §79-14-404.

Specified classes or groups of general partners, §79-14-405.

Time limitation on liability upon return of contribution, §79-14-608.

Transaction of business by partner with partnership, §79-14-107.

Transitional rules for existing partnerships, §79-14-1106.

Trust as partner dissolved or terminated.

- Power of legal representative or successor to exercise rights, §79-14-705.

LIMITED PARTNERSHIPS —Cont'd

Value of property or services contributed by partner.

- Partnership to keep statements, §79-14-105.

Voting by general partner, §79-14-405.

Voting entitlement to specified classes or groups of limited partners, §79-14-302.

When person becomes limited partner, §79-14-301.

Winding up of affairs, §79-14-803.

- Certificate of cancellation, §79-14-203.
- Delivery to limited partners, §79-14-209.
- Execution, §79-14-204.
- Court order requiring, §79-14-205.
- False statement, liability, §79-14-207.
- Fee, §79-14-1104.
- Filing in office of secretary of state, §79-14-206.

- Distribution of assets, §79-14-804.

Withdrawal by limited partner, §79-14-603.

Withdrawal of general partner, §79-14-602.

- Distributions, §79-14-604.
- Events causing, §79-14-402.

Withdrawal of limited partner.

- Distributions, §79-14-604.

LIQUIDATED DAMAGES.

Agricultural cooperative marketing associations, §79-19-59.

LIVESTOCK MARKETING ASSOCIATIONS.

Agricultural associations generally, §§79-17-1 to 79-17-41.

Cooperative marketing associations generally, §§79-19-1 to 79-19-63.

LOANS.

Agricultural cooperative marketing associations.

- Limitation on loan, §79-19-61.

Nonprofit corporations.

- Loan or guarantee to director or officer, §79-11-282.

Small business investment companies, §§79-7-1 to 79-7-7.

M

MAGAZINES.

Nonprofit corporations.

Delivering notice through, §79-11-129.

MAIL.

Corporations.

Communicating notice by, §79-4-1.41.

Nonprofit corporations.

Communicating notice by mail,
§79-11-129.

Nonprofit corporations.

Communicating notice by mail,
§79-11-129.

**MANAGEMENT OF
INSTITUTIONAL FUNDS,**
§§79-11-601 to 79-11-617.

Applicability of act, §79-11-615.

**Appropriations for expenditures by
governing board, §79-11-603.**

**Consent of donor to release
restriction imposed by gift
instrument, §79-11-613.**

**Construed to effectuate general
purposes, §79-11-615.**

**Contracts by governing board with
independent investment
advisors, investment counsels or
managers, etc., §79-11-609.**

Definitions, §79-11-601.

**Delegation by governing body of
powers and duties, §79-11-609.**

Endowment fund defined, §79-11-601.

**Expenditures, appropriations for,
§79-11-603.**

**Gift instrument indicating donor's
intention that appreciation not
to be expended, §79-11-605.**

Governing board.

Defined, §79-11-607.

Duty of care, §79-11-611.

Expenditure of net appreciation,
§79-11-603.

Powers and duties regarding
delegation, contracting and
payment of compensation,
§79-11-609.

Powers and duties regarding
investments, §79-11-607.

**Implied restrictions on expenditure
of net appreciation.**

When restriction not implied,
§79-11-605.

**Institutional fund defined,
§79-11-601.**

**MANAGEMENT OF
INSTITUTIONAL FUNDS**

—Cont'd

**Investment advisory or management
services, compensation for.**

Authorization by governing board,
§79-11-609.

**Investments, powers and duties of
governing board, §79-11-607.**

**Net appreciation, expenditures,
§79-11-603.**

Restrictions, §79-11-605.

**Ordinary business care and
prudence to be exercised by
governing board, §79-11-611.**

**Release of restriction imposed by
gift instrument, §79-11-613.**

**Restrictions upon expenditure of
net appreciation, §79-11-605.**

**Uniform management of
institutional funds act,
§79-11-617.**

MARKETING ASSOCIATIONS.

Agricultural associations.

Generally, §§79-17-1 to 79-17-41.

**Agricultural cooperative marketing
associations, §§79-19-1 to 79-19-63.**

**Aquatic products marketing
associations.**

Fresh and salt water co-operatives,
§§79-21-51 to 79-21-67.

Generally, §§79-21-1 to 79-21-19.

MERGER OR CONSOLIDATION.

**Business corporations, §§79-4-11.01 to
79-4-11.08.**

Corporations.

Appraisal rights of shareholders,
§§79-4-13.01 to 79-4-13.31.

General provisions, §§79-4-11.01 to
79-4-11.08.

Nonprofit corporations, §§79-11-319 to
79-11-327.

Professional corporations, §79-10-81.
Shareholder protection.

Voting requirements, §§79-25-1 to
79-25-9.

Foreign corporations.

Nonprofit corporations, §79-11-327.

**Limited liability companies,
§§79-29-209 to 79-29-214.**

Professional limited liability
companies, §79-29-921.

**Nonprofit corporations, §§79-11-319
to 79-11-327.**

MERGER OR CONSOLIDATION

—Cont'd

Professional corporations, §79-10-81.

Professional limited liability companies, §79-29-921.

MISREPRESENTATION.

Charitable organizations.

Soliciting funds in state, §79-11-519.

MISSISSIPPI AQUACULTURE ACT OF 1988, §§79-22-1 to 79-22-35.

MISSISSIPPI CONTROL SHARE ACT, §§79-27-1 to 79-27-11.

MISSISSIPPI FARM BUREAU FEDERATION.

Agricultural associations generally, §§79-17-1 to 79-17-41.

Use of words Farm bureau, §79-17-11.

MISSISSIPPI INVESTMENT TRUST LAW, §§79-15-1 to 79-15-29.

MISSISSIPPI LIMITED LIABILITY COMPANY ACT, §§79-29-101 to 79-29-1204.

MISSISSIPPI NONPROFIT CORPORATION ACT, §§79-11-101 to 79-11-403.

MISSISSIPPI PROFESSIONAL CORPORATION ACT, §§79-10-1 to 79-10-117.

MISSISSIPPI REGISTRATION OF FOREIGN BUSINESS TRUSTS ACT, §§79-16-1 to 79-16-35.

MONOPOLIES AND RESTRAINT OF TRADE.

Trusts or combines in restraint or hindrance of trade.

Agricultural organizations.

Exempt entities, §79-19-51.

MORTGAGES AND DEEDS OF TRUST.

Corporations.

Nonprofit corporations.

Mortgaging or otherwise encumbering all or substantially all property, §79-11-329.

Nonprofit corporations.

All or substantially all property, §79-11-329.

Religious societies.

Divesting title in property, number of members required, §79-11-31.

MORTGAGES AND DEEDS OF TRUST —Cont'd

Religious societies —Cont'd

Encumbering property, number of members required, §79-11-31.

MUTUAL FUNDS.

Investments by governing board of institutional funds, §79-11-607.

N

NAMES.

Agricultural associations, §79-17-9.

Use of farm bureau, when unlawful, §79-17-11.

Business corporation act, §§79-4-4.01 to 79-4-4.03.

Corporations.

Business corporation act generally, §§79-4-4.01 to 79-4-4.03.

Nonprofit corporations.

Foreign corporations, §79-11-373.

Professional corporations, §79-10-21.

Federation of agricultural associations, §79-17-9.

Foreign business trusts, §79-16-7.

Changing name to one under which certificate of authority would not be granted, §79-16-9.

Foreign corporations.

Nonprofit corporations, §79-11-373.

Registering, §79-4-4.03.

Foreign investment trusts, §§79-15-105, 79-15-107.

Foreign limited partnerships, §79-14-904.

Investment trusts.

Foreign investment trusts, §§79-15-105, 79-15-107.

Limited partnerships, §79-14-102.

Foreign limited partnerships, §79-14-904.

Reservation of name, §79-14-103.

Nonprofit corporations, §§79-11-157 to 79-11-161.

Foreign corporations, §79-11-373.

Partnerships.

Limited liability partnerships.

Use of abbreviation or name, §79-13-1002.

Partner's disassociation when business not wound up.

Continued use of partnership name, §79-13-705.

NAMES —Cont'd

Professional corporations, §79-10-21.

Professional limited liability companies, §79-29-908.

Reservation of exclusive use of name.

Business corporation act, §79-4-4.02.

NEGLIGENCE.

Investment trusts.

Sued at law or in equity for negligence of trustees in performance of duties, §79-15-23.

Professional corporations.

Responsibility for negligent or wrongful acts or omissions, §79-10-67.

Professional limited liability companies.

Responsibility for negligent or wrongful act or omission in rendering services, §79-29-920.

NEW ORLEANS BANK FOR COOPERATIVES.

Agricultural cooperative marketing associations.

Ownership of stock, §79-19-63.

NEWSLETTERS.

Nonprofit corporations.

Delivering notice through, §79-11-129.

NONPROFIT ASSOCIATIONS.

Agricultural cooperative marketing associations, §§79-19-1 to 79-19-63.

NONPROFIT CORPORATIONS,

§§79-11-101 to 79-11-403.

Accounting records, requirements, §79-11-283.

Acting on behalf of corporation where incorporation not occurred.

Liability, §79-11-141.

Action by corporation without holding meeting.

Ballot delivered to members, §79-11-211.

Action by members without holding meeting.

Approval of action, §79-11-203.

Activities for which corporation may be organized, §79-11-149.

Administrative dissolution, §§79-11-347 to 79-11-353.

Agricultural cooperative marketing associations, §§79-19-1 to 79-19-63.

NONPROFIT CORPORATIONS

—Cont'd

Amendment of articles of incorporation, §§79-11-295 to 79-11-311.

Fee, §79-11-109.

Amendment to bylaws, §§79-11-313 to 79-11-317.

Annual membership meetings, §79-11-197.

Notice, §79-11-205.

Record date for determining members entitled to, §79-11-209.

Waiver of requirements by member, §79-11-207.

Applicability of provisions to pre-existing corporations, §79-11-395.

Foreign corporations, §79-11-397.

Appointment of proxy to act or vote for member, §79-11-221.

Articles of amendment, §79-11-305.

Articles of correction.

Correcting filed documents, §79-11-113.

Articles of dissolution, §79-11-337.

Articles of incorporation.

Amending articles.

Adoption when no members entitled to vote, §79-11-301.

Authorization to amend, §79-11-295.

By board of directors without action by members, §79-11-299.

Class entitled to vote on amendment as class.

Articles affecting members of class, §79-11-303.

Delivery to secretary of state, §79-11-305.

Fee, §79-11-109.

Filing articles of amendment, §79-11-305.

Legal status of corporation not to be affected, §79-11-311.

Members of class entitled to vote on amendment as class.

Articles affecting members, §79-11-303.

Pending actions against corporation not to be affected, §79-11-311.

Prior to corporation's acquisition of members, §79-11-297.

Procedure for making, §79-11-301.

Reorganization ordered by court, amendments to carry out, §79-11-309.

NONPROFIT CORPORATIONS

—Cont'd

Articles of incorporation —Cont'd

Amending articles —Cont'd

Resolution of board submitted to members for vote, §79-11-301.

Restated articles, §79-11-307.

Conclusive proof that incorporators satisfied conditions.

Filing of articles by secretary of state, §79-11-139.

Contents, §79-11-137.

Corporate existence begins when filed, §79-11-139.

Defined, §79-11-127.

Fees for filing, §79-11-109.

Powers need not be enumerated, §79-11-137.

Restatement of articles, §79-11-307.

Fee, §79-11-109.

Articles of merger, §79-11-323.

Articles of revocation of dissolution, §79-11-339.

Attorney general.

Challenge to corporation's power to act, §79-11-155.

Dissolution by court order, §79-11-355.

Injunctive relief.

Commencement of proceedings authorized by attorney general but commenced by another, §79-11-133.

Intervention.

Commencement of proceedings authorized to be brought by attorney general but commenced by another, §79-11-133.

Notice of commencement of proceedings authorized to be commenced by attorney general but commenced by another, §79-11-133.

Bar to claims against dissolved corporation, §§79-11-343, 79-11-345.

Beginning of corporate existence.

Filing of articles of incorporation, §79-11-139.

Best interest of corporation.

Duty of director to act in, §79-11-267.

Duty of officer to act in, §79-11-275.

Board of directors.

Action without meeting, §79-11-257.

Amendment of bylaws.

Corporations having members, §79-11-315.

NONPROFIT CORPORATIONS

—Cont'd

Board of directors —Cont'd

Amendment of bylaws —Cont'd

No members, §79-11-313.

Amendments to articles of incorporation.

Amendments by directors without action by members, §79-11-299.

Appointment or designation of corporation without members, §79-11-237.

Authorizing or approving conflict of interest transaction, §79-11-269.

Best interest of corporation, duty to act in, §79-11-267.

Committees, §79-11-265.

Compensation, §79-11-253.

Conflict of interest transaction, §79-11-269.

Consent action without meeting, §79-11-257.

Continuance to serve until successor elected, §79-11-239.

Corporation required to have board, §79-11-231.

Cumulative voting for director, §79-11-223.

Dissolution of corporation.

Approval of directors, §§79-11-333, 79-11-335.

Distribution to members.

Liability of director, §79-11-270.

Duties of directors to corporation, §79-11-267.

Effective date of resignation, §79-11-243.

Election by members.

Cumulative voting, §79-11-223.

Methods of voting, §79-11-225.

Election of directors, §79-11-237.

Filling vacancy, §79-11-251.

Emergency powers, §79-11-153.

Good faith, duty of, §79-11-267.

Increasing or decreasing by amendment to articles or bylaws, §79-11-235.

Indemnification of director, §79-11-281.

Liability for unlawful distribution, §79-11-270.

Liability insurance purchased and maintained on behalf of director, §79-11-281.

Loan or guarantee to director prohibited, §79-11-282.

NONPROFIT CORPORATIONS

—Cont'd

Board of directors —Cont'd

- Meetings, §79-11-255.
 - Action without meeting, §79-11-257.
 - Notice, §79-11-259.
 - Waiver, §79-11-261.
- Organizational meeting after incorporation, §79-11-143.
- Participation of director, §79-11-255.
- Petition for alternative method for calling or conducting, §79-11-131.
- Presence deemed to be assent to action, §79-11-263.
- Quorum, §79-11-263.
- Number, §79-11-235.
- Organizational meeting after incorporation, §79-11-143.
- Plan of merger, approval or abandonment, §79-11-321.
- Powers exercised by or under authority of director, §79-11-231.
- Qualifications, §79-11-233.
- Reliance on information, §79-11-267.
- Removal of appointed or designated director, §79-11-247.
- Removal of director by court proceeding, §79-11-249.
- Removal of elected director, §79-11-245.
- Resignation, §79-11-243.
- Sale or other disposition of all or substantially all property.
 - Approval by board, §79-11-331.
- Staggering term, §79-11-241.
- Successive terms, electing for, §79-11-239.
- Term, §79-11-239.
 - Staggering term, §79-11-241.
- Unlawful distribution liability, §79-11-270.
- Vacancies, §§79-11-239, 79-11-251.

Bylaws, §79-11-145.

- Amendment.
 - Adoption, §79-11-313.
 - Approval where corporation has member, §79-11-315.
 - Class of members affected, voting of class, §79-11-317.
 - No members, procedure for adopting, §79-11-313.
- Defined, §79-11-127.
- Emergency bylaws, §79-11-147.

Certificate of authority.

- Foreign corporations, §§79-11-363 to 79-11-389.

NONPROFIT CORPORATIONS

—Cont'd

Certificate of existence, §79-11-121.

- Application.
 - Secretary to prescribe and furnish form on request, §79-11-107.

Challenge to validity of corporate action, §79-11-155.

Claims against corporation upon dissolution, §§79-11-343, 79-11-345.

Commercial purposes, restrictions on use of membership lists, §79-11-291.

Committees of directors, §79-11-265.

Communicating notice, §79-11-129.

Conflict of interest transactions.

- Directors, §79-11-269.

Consent by members to action without meeting, §79-11-203.

Consideration for admission as member, §79-11-173.

Copy of records to be kept at principal office, §79-11-283.

Correcting filed documents, §79-11-113.

Court ordered dissolution, §§79-11-355 to 79-11-361.

Court ordered meeting of members, §79-11-201.

Court ordered reorganization.

- Amendments to articles, §79-11-309.

Creditor actions.

- Court ordering dissolution, §79-11-355.
- Final judgment rendered in favor of creditor against corporation and execution returned unsatisfied, §79-11-185.
- Intervention by other creditors in creditor's proceeding, §79-11-185.

Cumulative voting by member, §79-11-223.

Deadlock in management of affairs or among members.

- Ground for court ordered dissolution, §79-11-355.

Definitions, §79-11-127.

Delayed effective time and date of filed documents, §79-11-111.

Derivative actions.

- Members bringing proceedings on behalf of corporation, §79-11-193.

Dissolution, §§79-11-333 to 79-11-361.

- Administrative dissolution, §§79-11-347 to 79-11-353.
- Appeal from denial of application for reinstatement after dissolution, §79-11-353.

NONPROFIT CORPORATIONS

—Cont'd

Dissolution —Cont'd

- Administrative dissolution —Cont'd
 - Application for reinstatement after dissolution, §79-11-351.
 - Commencement of proceeding by secretary of state, §79-11-347.
 - Failure to correct ground within time period, §79-11-349.
 - Grounds, §79-11-347.
 - Notice that ground for dissolution exists, service, §79-11-349.
 - Procedures generally, §79-11-349.
 - Reinstatement after dissolution, §79-11-351.
 - Denial by secretary of state, §79-11-353.
 - Time period for correcting ground, §79-11-349.
 - Winding up and liquidating, continuing in existence for, §79-11-349.
- Application of assets upon dissolution.
 - Court ordered, §79-11-359.
 - Voluntary, §79-11-336.
 - Statement to be included in articles of dissolution, §79-11-337.
- Board of directors or members dissolving.
 - Approval required, §79-11-335.
 - Articles of dissolution, §79-11-337.
 - Articles of revocation of dissolution, §79-11-339.
- Assets, application and distribution, §79-11-336.
 - Statement to be included in articles of dissolution, §79-11-337.
- Bar to claims against corporation.
 - Failure to present claim or commence proceeding within time period, §§79-11-343, 79-11-345.
- Claims against corporation, disposition.
 - Bar to claims of unknown claimants, §79-11-345.
 - Bar to known claims, §79-11-343.
 - Known claims, §79-11-343.
 - Notice to known claimants, §79-11-343.
 - Publication of notice of disposition and request to present claims, §79-11-345.

NONPROFIT CORPORATIONS

—Cont'd

Dissolution —Cont'd

- Board of directors or members dissolving —Cont'd
 - Claims against corporation, disposition —Cont'd
 - Unknown claimants, §79-11-345.
 - Consent or written ballot, approval by members, §79-11-335.
 - Continuance in existence to wind up and liquidate, §79-11-341.
 - Effective date of dissolution, §79-11-337.
 - Filing articles of revocation of dissolution with secretary of state, §79-11-339.
 - Filing of articles of dissolution with secretary of state, §79-11-337.
 - Notice to members of meeting, §79-11-335.
 - Resolution by board, submission to members, §79-11-335.
 - Revocation of dissolution, §79-11-339.
 - Statute of limitations on claims against corporations, §§79-11-343, 79-11-345.
 - Winding up and liquidation of affairs, §79-11-341.
- Court order, §§79-11-355 to 79-11-361.
 - Application and distribution of assets, §79-11-359.
 - Attorney general bringing proceeding, §79-11-355.
 - Creditors' actions, §79-11-355.
 - Deadlock in management or members, grounds, §79-11-355.
 - Decree, §79-11-361.
 - Directors or members need not be parties, §79-11-357.
 - Grounds, §79-11-355.
 - Injunctions, issuance by court, §§79-11-357, 79-11-359.
 - Members or directors bringing decision, §79-11-355.
 - Receivers or custodians, appointment by court, §§79-11-357, 79-11-359.
 - Venue, §§79-11-355, 79-11-357.
 - Winding up and liquidation directed after entry of decree, §79-11-361.
- Distribution of assets upon dissolution.
 - Court ordered, §79-11-359.

NONPROFIT CORPORATIONS

—Cont'd

Dissolution —Cont'd

Distribution of assets upon dissolution
—Cont'd

Voluntary, §79-11-336.

Statement to be included in
articles of dissolution,
§79-11-337.

Fees for filing, §79-11-109.

Incorporators or directors of
corporation with no members,
§79-11-333.

Notice of meeting at which dissolution
to be approved.

Dissolution by incorporators or
directors of corporation with no
members, §79-11-333.

Plan of dissolution, adopting.

Dissolution by incorporators or
directors of corporation with no
members, §79-11-333.

Distributions.

Liability of director for unlawful
distribution, §79-11-270.

**Donations for public welfare or for
charitable, scientific or
educational purposes, §79-11-151.**

**Dues, assessments or fees, member
liability, §79-11-183.**

**Effective date of filed documents,
§79-11-111.**

**Effect of repeal of prior statutes,
§79-11-399.**

Emergency bylaws, §79-11-147.

**Emergency powers of board of
directors, §79-11-153.**

**Evidence of filing, certified copy,
§79-11-119.**

**Evidence of good standing in state,
certificate of existence,
§79-11-121.**

**Existing corporations, applicability
of provisions, §79-11-395.**

Foreign corporations authorized to
transact business, §79-11-397.

Expulsion of member, §79-11-189.

**False documents to be filed, signing,
§79-11-123.**

**Filing of documents, §§79-11-105 to
79-11-123.**

Appeal of refusal by secretary to file
document, §79-11-117.

Articles of correction.

Correcting document filed,
§79-11-113.

NONPROFIT CORPORATIONS

—Cont'd

Filing of documents —Cont'd

Certified copy as conclusive evidence
of filing, §79-11-119.

Compelling secretary to file document,
petition, §79-11-117.

Correction of document filed,
§79-11-113.

Delayed effective time and date,
documents specifying, §79-11-111.

Delivery to office of secretary of state,
§79-11-105.

Duty of secretary to file document,
§79-11-115.

Effective date, §79-11-111.

Electronic transmission delivery of
document to secretary of state,
§79-11-105.

English language, §79-11-105.

Evidence of filing, certified copy,
§79-11-119.

Execution of document, §79-11-105.

False document to be filed, signing,
§79-11-123.

Fees for filing, serving process upon
secretary, copying and certifying,
§79-11-109.

Forms, prescribing and furnishing,
§79-11-107.

Ministerial duty, secretary's duty to
file, §79-11-115.

Petition to compel secretary to file
document, §79-11-117.

Refusal by secretary to file document,
§79-11-115.

Appeal of refusal, §79-11-117.

Requirements, §79-11-105.

Schedule of fees for filing, copying and
certifying, §79-11-109.

Signing false document to be filed,
§79-11-123.

Signing of document, §79-11-105.

Typewritten or printed documents
required, §79-11-105.

**Foreign corporations, §§79-11-363 to
79-11-389.**

Activities not constituting transacting
business within state, §79-11-363.

Amendment of certificate of authority,
§79-11-369.

Certificate of authority.

Amendment, §79-11-369.

Application, §79-11-367.

Secretary to prescribe and furnish
form on request, §79-11-107.

NONPROFIT CORPORATIONS

—Cont'd

Foreign corporations —Cont'd

- Certificate of authority —Cont'd
 - Authorization of certificate, §79-11-371.
 - Civil penalty for not securing, §79-11-365.
 - Fee, §79-11-109.
 - Filing application with secretary of state, §79-11-367.
 - Required to transact business in state, §79-11-363.
 - Revocation, §§79-11-385 to 79-11-389.
 - Rights and privileges of corporation with valid certificate, §79-11-371.
- Certificate of revocation of certificate of authority, §79-11-387.
- Certificate of withdrawal, §79-11-383.
 - Secretary to prescribe and furnish form on request, §79-11-107.
- Civil penalty for not securing certificate of authority, §79-11-365.
- Distinguishable name upon records, §79-11-373.
- Existing foreign corporations
 - authorized to transact business, applicability of provisions to, §79-11-397.
- Merger with domestic corporation, §79-11-327.
- Name, §79-11-373.
 - Registration, §79-11-161.
- Registered agent, §79-11-375.
 - Agent for service of process, notice or demand, §79-11-381.
 - Changing, §79-11-377.
 - Resignation, §79-11-379.
- Registered office, §79-11-375.
 - Changing, §79-11-377.
- Registration of name, §79-11-161.
- Resignation of registered agent, §79-11-379.
- Revocation of certificate of authority.
 - Appeal, §79-11-389.
 - Certificate of revocation, §79-11-387.
 - Commencement by secretary of state, §79-11-385.
 - Grounds, §79-11-385.
 - Issuance of certificate of revocation, §79-11-387.
- Service of process, §79-11-381.

NONPROFIT CORPORATIONS

—Cont'd

Foreign corporations —Cont'd

- Stay of proceedings commenced by foreign corporation.
 - Determination of whether corporation require certificate of authority, §79-11-365.
- Transacting business within state without certificate of authority, §79-11-365.
- Withdrawal, §79-11-383.
- General powers**, §79-11-151.
- Good faith.**
 - Director's duty, §79-11-267.
 - Officer's duty, §79-11-275.
- Good standing of corporation.**
 - Certificate of existence conclusive evidence, §79-11-121.
- Incorporators**, §79-11-135.
- Indemnification of director, officer, employee or agent**, §79-11-281.
- Injunctive relief by attorney general.**
 - Commencement of proceeding authorized to be brought by attorney general but commenced by another, §79-11-133.
- Inspection of list of members**, §79-11-213.
- Inspection of records by members.**
 - Attorney or agent with same rights as members, §79-11-287.
 - Court ordered inspection, §79-11-289.
 - Entitlement to inspect and copy, §79-11-285.
 - Reasonable charge imposed, §79-11-287.
 - Requirements for inspecting and copying, §79-11-285.
- Insurance purchased and maintained on behalf of director, officer, employee or agent**, §79-11-281.
- Intervention in proceedings by attorney general.**
 - Commencement of proceeding authorized to be brought by attorney general but commenced by another, §79-11-133.
- Joint and several liability.**
 - Purporting to act on behalf of corporation where incorporation has not occurred, §79-11-141.
- Judicial dissolution**, §§79-11-355 to 79-11-361.

NONPROFIT CORPORATIONS

—Cont'd

Lack of power to act.

Challenge to validity of corporation
not permitted on ground,
§79-11-155.

Legislative reservation of power to amend or repeal, §79-11-103.

Liability insurance purchased and maintained on behalf of director, officer, employee or agent, §79-11-281.

Liability of members for acts, debts, liabilities or obligations, §79-11-181.

Liability of members for dues, assessments or fees, §79-11-183.

List of members, §79-11-213.

Restrictions on use, §79-11-291.

Loans or guarantees to directors or officers, §79-11-282.

Mail, communicating notice by, §79-11-129.

Meetings of directors, §79-11-255.

Action taken without meeting,
§79-11-257.

Notice, §79-11-259.

Waiver, §79-11-261.

Organizational meeting after
incorporation, §79-11-143.

Participation by directors, §79-11-255.

Petition for alternative method for
calling or conducting, §79-11-131.

Presence deemed assent to action,
§79-11-263.

Quorum, §79-11-263.

Meetings of members.

Action without meeting, approval,
§79-11-203.

Ballot delivered to members,
§79-11-211.

Adjourned meetings, notice,
§79-11-205.

Annual meeting, §79-11-197.

Court-ordered meetings, §79-11-201.

Demand for special meeting,
§79-11-199.

Notice of meetings and adjourned
meetings, §79-11-205.

Record date for determining
members entitled to notice,
§79-11-209.

Waiver by member, §79-11-207.

Petition for alternative method for
calling or conducting, §79-11-131.

NONPROFIT CORPORATIONS

—Cont'd

Meetings of members —Cont'd

Quorum requirements, §79-11-217.

Record date for determining members
entitled to notice, §79-11-209.

Special meeting, §79-11-199.

Voting by members, §§79-11-211 to
79-11-229.

Waiver of notice requirement by
member, §79-11-207.

Members.

Admission, §79-11-171.

Amendment of bylaws, §79-11-315.

Class voting on amendment
affecting class, §79-11-315.

Amendments to articles of
incorporation.

Class voting on amendment
affecting class, §79-11-303.

Procedure if members entitled to
vote on amendment, §79-11-301.

Approval of action without holding
meeting, §79-11-203.

Ballot delivered to members,
§79-11-211.

Challenging expulsion, suspension or
termination for defective notice.

Limitation of action, §79-11-189.

Consent of person to be admitted as
member, §79-11-171.

Consent to action without meeting,
§79-11-203.

Consideration for admission,
§79-11-173.

Court-ordered inspection and copying
of list of members, §79-11-213.

Creditor actions to reach liability of
member, §79-11-185.

Criteria or procedures for admission
established by articles or bylaws,
§79-11-171.

Cumulative voting for director,
§79-11-223.

Derivative proceedings.

Proceedings brought on behalf of
corporation, §79-11-193.

Dissolution of corporation.

Approval of members, §79-11-335.
Dues, assessments or fees, liability,
§79-11-183.

Expulsion.

Fair and reasonable procedure,
§79-11-189.

Final judgment in favor of creditor to
reach member liability,
§79-11-185.

NONPROFIT CORPORATIONS

—Cont'd

Members —Cont'd

- Inspection of list of members, §79-11-213.
- Inspection of records.
 - Agent or attorney has same rights as members, §79-11-287.
 - Court ordered inspection, §79-11-289.
 - Entitlement to inspect and copy, §79-11-285.
 - Reasonable charge may be imposed, §79-11-287.
- Liability for acts, debts, liabilities or obligations, §79-11-181.
- Liability for dues, assessments or fees, §79-11-183.
- Limitation of action on challenging expulsion, suspension or termination, §79-11-189.
- List of members.
 - Entitled to notice or entitled to vote, §§79-11-213, 79-11-291.
- Mail notice of expulsion, suspension or termination, §79-11-189.
- Meetings.
 - Action by members without meeting, approval, §79-11-203.
 - Action taken without meeting, ballot, §79-11-211.
 - Adjourned meetings, notice, §79-11-205.
 - Annual meetings, §79-11-197.
 - Notice, §79-11-205.
 - Approval of action taken without holding meeting.
 - Ballots delivered to members, §79-11-211.
 - Consent to action without holding meeting, §79-11-203.
 - Court-ordered meeting, §79-11-201.
 - Demand for special meeting, §79-11-199.
 - List of members entitled to notice of meeting and members entitled to vote, §79-11-213.
 - Notice of meeting or adjourned meeting.
 - Record date for determining members entitled to notice, §79-11-209.
 - Waivers, §79-11-207.
 - Petition for alternative method for calling or conducting, §79-11-131.

NONPROFIT CORPORATIONS

—Cont'd

Members —Cont'd

- Meetings —Cont'd
 - Quorum requirements, §79-11-217.
 - Record date for determining members entitled to notice, §79-11-209.
 - Special meetings, §79-11-199.
 - Notice, §79-11-205.
 - Voting by members at meeting, §§79-11-211 to 79-11-229.
 - Waiver of notice requirement, §79-11-207.
- Notice of expulsion, suspension or termination, §79-11-189.
- Not required to have members, §79-11-175.
- Personal liability for acts, debts, liabilities or obligations, §79-11-181.
- Plan of merger, approval or abandonment, §79-11-321.
- Proceedings brought on behalf of corporation, §79-11-193.
- Proxies.
 - Acceptance or rejection of proxy appointment, §79-11-227.
- Purchase of membership by corporation, §79-11-293.
- Record date for determining members entitled of notice of meeting, §79-11-209.
- Records, inspection, §§79-11-285 to 79-11-289.
- Resignation, §79-11-187.
 - Member not relieved of obligations, §79-11-187.
- Purchase by corporation of membership, §79-11-191.
- Restrictions on transfers of membership, §79-11-179.
- Rights and obligations, §79-11-177.
- Sale or other disposition of all or substantially all property.
 - Approval, §79-11-331.
- Same rights and obligations unless classes established, §79-11-177.
- Suspension.
 - Fair and reasonable procedure, §79-11-189.
- Termination.
 - Fair and reasonable procedure, §79-11-189.
 - Purchase by corporation of membership, §79-11-191.

NONPROFIT CORPORATIONS

—Cont'd

Members —Cont'd

Transfer of membership or right arising, §79-11-179.

Voting.

Acceptance of vote by corporation, §79-11-227.

Action taken without meeting.

Ballot of members, §79-11-211.

Court-ordered inspection of list of members, §79-11-213.

Election of directors.

Method, §79-11-225.

Entitlement of member, §79-11-215.

Inspection of list of members by a member, §79-11-213.

List of members entitled to notice of meeting and entitled to vote, §79-11-213.

Membership standing of record in names of two or more persons, voting entitlement, §79-11-215.

Proxies, voting by, §79-11-221.

Quorum requirements, §79-11-217.

Rejecting vote by corporation, §79-11-227.

Requirements for member actions, §79-11-219.

Voting agreement, §79-11-229.

Voting agreements, §79-11-229.

Waiver of notice of meeting requirement, §79-11-207.

Merger.

Abandonment of plan, §79-11-321.

Approval of plan of merger, §79-11-321.

Articles of merger, §79-11-323.

Fee, §79-11-109.

Authorization to merge, §79-11-319.

Effect of merger, §79-11-325.

Filing articles of merger with secretary of state, §79-11-323.

Foreign corporation merging with domestic corporation, §79-11-327.

Plan of merger, §79-11-319.

Approval, §79-11-321.

Surviving corporation, effect of merger on, §79-11-325.

Minutes of meetings of members and directors.

Permanent record to be kept, §79-11-283.

Mississippi nonprofit corporation act, §79-11-101.

NONPROFIT CORPORATIONS

—Cont'd

Mortgaging or otherwise

encumbering all or substantially all corporation's property, §79-11-329.

Name, §79-11-157.

Application for reservation of exclusive use of name, §79-11-159.

Authorization to use name not distinguishable upon records, §79-11-157.

Distinguishable upon records of secretary of state, §79-11-157.

Fees for applications, §79-11-109.

Foreign corporations, §79-11-373.

Registration of name, §79-11-161.

Registration of foreign corporation's name, §79-11-161.

Reserving exclusive use of corporate name, §79-11-159.

Newsletter, magazine or publication.

Delivering notice or report, §79-11-129.

Notice generally, communicating, types, §79-11-129.

Officers, §79-11-271.

Appointment not to create contract right between officer and corporation, §79-11-279.

Best interest of corporation.

Officers to act in, §79-11-275.

Duties, §79-11-273.

Good faith, officer's duty, §79-11-275.

Holding more than one office, §79-11-271.

Indemnification, §79-11-281.

Liability insurance purchased and maintained on behalf of officer, §79-11-281.

Loan or guarantee to officer prohibited, §79-11-282.

Minutes of directors and members meetings.

Designation of officer to prepare, §79-11-271.

Performance of duties, §79-11-273.

Reliance upon others for information, §79-11-275.

Removal, §79-11-277.

Contract rights if any not affected, §79-11-279.

Resignation, §79-11-277.

Oral notice, §79-11-129.

Organizational meeting, §79-11-143.

NONPROFIT CORPORATIONS

—Cont'd

Pensions and pension plans or pension trusts.

Power to pay and establish,
§79-11-151.

Personal liability of members for acts, debts, liabilities or obligations, §79-11-181.

Persons who may act as incorporators, §79-11-135.

Petitions for alternative method for calling or conducting meetings, §79-11-131.

Powers generally, §79-11-151.

Private foundations, §§79-11-51 to 79-11-61.

Proxies.

Acceptance or rejection of proxy appointment, §79-11-227.

Appointment and revocation of proxy to vote or act for member,
§79-11-221.

Purchasing memberships, conditions, §79-11-293.

Purposes for which organized, §79-11-149.

Record date.

Members entitled to notice of meeting,
§79-11-209.

Records, §79-11-283.

Inspection of records by members,
§§79-11-285 to 79-11-289.

Registered agent, §79-11-163.

Agent for service of process, notice or demand, §79-11-169.

Changing, §79-11-165.

Foreign corporations, §§79-11-375 to 79-11-381.

Resignation of agency, §79-11-167.

Registered office, §79-11-163.

Changing, §79-11-165.

Foreign corporations, §§79-11-375, 79-11-377.

Reinstatement after administrative dissolution, §79-11-351.

Denial of application, appeals,
§79-11-353.

Religious corporations.

Defined, §79-11-127.

Provisions applicable to, §79-11-401.

Provisions inapplicable to, §79-11-403.

Religious doctrine inconsistent with statutes controlling, §79-11-403.

Religious societies, §§79-11-31 to 79-11-47.

NONPROFIT CORPORATIONS

—Cont'd

Removal of directors.

Appointed or designated directors,
§79-11-247.

Court proceeding to remove,
§79-11-249.

Elected director, §79-11-245.

Removal of officer, §79-11-277.

Reorganization ordered by court.

Amendments to articles of incorporation to carry out,
§79-11-309.

Repeal of prior statutes, effect, §79-11-399.

Reports.

Status report delivered to secretary of state, §79-11-391.

Reservation of power by legislature to amend or repeal, §79-11-103.

Resignation of director, §79-11-243.

Resignation of member, §79-11-187.

Member not relieved of obligations,
§79-11-187.

Purchase by corporation of membership, §79-11-191.

Resignation of officer, §79-11-277.

Restatement of articles of incorporation, §79-11-307.

Fee, §79-11-109.

Revocation of dissolution, §79-11-339.

Revocation of proxy to act or vote for member, §79-11-221.

Rights and obligations of members, §79-11-177.

Rural waterworks corporations.

Financial reports, §79-11-394.

Notice of annual meeting to subscribers, §79-11-394.

Roster of member requirements for obtaining federal tax exemptions,
§79-11-393.

Special requirements for obtaining federal tax exemptions,
§79-11-393.

Sale or other disposition of all or substantially all property of corporation.

In regular course of business,
§79-11-329.

Not in regular course of business,
§79-11-331.

Secretary of state.

Administrative dissolution, commencing proceeding,
§79-11-347.

NONPROFIT CORPORATIONS

—Cont'd

Secretary of state —Cont'd

- Application for certificate of authority by foreign corporation, filing with secretary, §79-11-367.
- Articles of amendment, filing with secretary, §79-11-305.
- Articles of dissolution, filing with, §79-11-337.
- Articles of merger, filing with secretary, §79-11-323.
- Certificate of existence, application to secretary, §79-11-121.
- Changing registered office or registered agent, filing statement, §79-11-165.
- Court ordered reorganization, filing amendments to articles, §79-11-309.
- Dissolution by court order, §79-11-355.
- Fees for filing, serving process upon secretary, copying and certifying copy of filed documents, §79-11-109.
- Filing of documents with secretary generally, §§79-11-105 to 79-11-123.
- Powers reasonably necessary to perform duties, §79-11-125.
- Resignation of registered agent, filing statement, §79-11-167.
- Restatement of articles of incorporation, filing with secretary, §79-11-307.
- Status report delivered to secretary, §79-11-391.

Selling or purchasing membership lists, §79-11-291.

Service of process, §79-11-169.

Foreign corporations, §79-11-381.

Special meetings of members, §79-11-199.

Notice, §79-11-205.

Record date for determining members entitled to, §79-11-209.

Waiver of requirements by member, §79-11-207.

Status report delivered to secretary of state, §79-11-391.

Statute of limitation as to claims against dissolved corporation, §§79-11-343, 79-11-345.

Suspension of member, §79-11-189.

Termination of members, §79-11-189.

Purchase by corporation of membership, §79-11-191.

NONPROFIT CORPORATIONS

—Cont'd

Transfer of membership, §79-11-179.

Uniform management of institutional funds, §§79-11-601 to 79-11-617.

Unlawful distributions, director liability, §79-11-270.

Validity of corporate action, challenge, §79-11-155.

Voting agreements between members, §79-11-229.

Voting by members.

Acceptance or rejection of vote, §79-11-227.

Action taken by ballot without meeting, §79-11-211.

Affirmative votes for taking action, §79-11-219.

Court-ordered inspection of list of members entitled to vote, §79-11-213.

Cumulative voting for directors, §79-11-223.

Election of directors.

Cumulative voting, §79-11-223.

Methods, §79-11-225.

Entitlement as to voting, §79-11-215.

Inspecting list of members entitled to vote, §79-11-213.

List of members entitled to vote, §79-11-213.

Membership standing in names of two or more persons, voting entitlement, §79-11-215.

Proxies, §79-11-221.

Quorum requirements, §79-11-217.

Voting agreement, §79-11-229.

Waiver by member of notice of meeting requirement, §79-11-207.

Winding up and liquidating affairs.

Administrative dissolution, continuance in existence for, §79-11-349.

Continuance in existence for, §79-11-341.

Court ordered dissolution, §79-11-361.

Written notice, §79-11-129.

NOTICE.

Agricultural cooperative marketing associations.

First meeting of persons at interest, §79-19-11.

General and special meetings, §79-19-19.

NOTICE —Cont'd

Charitable gift annuities.

- Failure to provide, §79-11-659.
- To donor on issuance, §79-11-655.
- To secretary of state on issuance, §79-11-657.

Charitable solicitations.

- Exemption notice filed prior to solicitation, §79-11-505.

Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

Corporations.

- Administrative dissolution.
 - Service of notice of grounds existing, §79-4-14.21.

- Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

- Directors meetings, §§79-4-8.22, 79-4-8.23.

Judicial dissolution.

- Election to purchase shares of petitioner to avoid dissolution, §79-4-14.34.

- Entitlement notice, §79-4-14.31.

Nonprofit corporations.

- Administrative dissolution by secretary of state.
 - Service of notice that grounds exist for dissolution, §79-11-349.

- Claims against dissolved corporations, §§79-11-343, 79-11-345.

- Dissolution by incorporators or directors of corporation with no members.

- Meeting in which dissolution to be approved, §79-11-333.

- Expulsion or suspension of member or termination or suspension of membership, §79-11-189.

- Meetings of directors, §79-11-259.
- Waiver, §79-11-261.

- Meetings of members, §79-11-205.
 - Record date for determining members entitled to notice, §79-11-209.

- Waiver of requirements by members, §79-11-207.

- Requirements generally, communicating generally, §79-11-129.

NOTICE —Cont'd

Corporations —Cont'd

- Requirements under business corporation act, §79-4-1.41.
- Shareholders sharing common address, §79-4-1.44.
- Rural waterworks corporations.
 - Annual meeting, §79-11-394.
- Shareholders meetings, §§79-4-7.05 to 79-4-7.07.
- Shareholders, required notice to.
 - Exception to requirement, §79-4-16.06.

Dissolution of corporations.

- Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

Limited liability companies.

- Certificate of formation.
 - Notice that entity formed limited liability company, §79-29-208.
- Known claims against dissolved company, §79-29-806.
- Unknown claims against dissolved company, §79-29-807.

Limited partnerships.

- Certificate of limited partnership.
 - Notice that partnership limited partnership, §79-14-208.
- Withdrawal of general partner, §79-14-602.

Nonprofit corporations.

- Administrative dissolution.
 - Service of notice that grounds exist for dissolution, §79-11-349.
- Claims against dissolved corporations, §§79-11-343, 79-11-345.
- Dissolution by incorporators or directors of corporation with no members.
 - Corporation to give notice of meeting, §79-11-333.
- Expulsion or suspension of member or termination or suspension of membership, §79-11-189.
- General requirements, communicating generally, §79-11-129.
- Meetings of directors, §79-11-259.
 - Waiver, §79-11-261.
- Meetings of members, §79-11-205.
 - Record date for determining member entitled to notice, §79-11-209.
- Waiver of notice requirements, §79-11-207.

Partnerships.

- Knowledge and notice, §79-13-102.

NOTICE —Cont'd

Professional corporations.

Compulsory acquisition of shares after death or disqualification of shareholder.

Corporate notice to estate of deceased shareholder or disqualified person, §79-10-39.

Demand to commence proceeding to determine fair value of shares, §79-10-41.

Professional corporation status statement on shares, §79-10-33.

Rural waterworks corporations.

Annual meeting, §79-11-394.

NURSING HOMES.

Religious society's ecclesiastical body's or congregation's power to own, §79-11-33.

O

ORPHANS' HOMES.

Religious societies, ecclesiastical bodies or congregations.

Power to own buildings used for orphan asylum or institution, §79-11-33.

OSTEOPATHS.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional service defined to include service by osteopath, §79-29-902.

P

PACKAGES AND PACKAGING.

Tilapia products sold for human consumption, requirements, §79-22-35.

PARISH HOUSES.

Religious society, ecclesiastical body and congregation's power to own, §79-11-33.

PARTIES.

Investment trust, actions against.

Trustees or holders of certificates of beneficial interest need not be joined as parties, §79-15-23.

PARTIES —Cont'd

Limited partnerships.

Derivative actions.

Proper plaintiff, §79-14-1002.

PARTNERSHIPS, §§79-13-101 to 79-13-1206.

Accounting rights and duties, §79-13-403.

Actions.

By and against partnership, §79-13-307.

Partnerships liability for partner's actionable conduct, §79-13-305.

Agency relationship.

Partner agent of partnership, §79-13-301.

Applicability of act.

Voluntary election before January 1, 2007, §79-13-1205.

Attorney general actions, §79-13-1105.

Bankruptcy.

Partnership as debtor, §79-13-307.

Code of conduct, §79-13-404.

Commercial and proprietary information, §79-23-1.

Conflicts of law.

Governing law, §79-13-106.

Supplemental principles of law, §79-13-104.

Construction of act.

Applicability of act, §79-13-1205.

Governing law, §79-13-106.

Partnerships subject to governing, §79-13-107.

Savings clause, §79-13-1206.

Severability, §79-13-1203.

Short title, §79-13-1202.

Supplemental principles of law, §79-13-104.

Uniformity of application, §79-13-1201.

Continuation of partnership.

Expiration of definite time or particular undertaking, §79-13-406.

Contribution.

Partner's liability, §79-13-306.

Conversions.

Definitions, §79-13-901.

Effect of, §79-13-904.

Nonexclusiveness of provisions, §79-13-908.

Partnership to limited partnership, §79-13-902.

Unchanged entity, §79-13-904.

PARTNERSHIPS —Cont'd

Death of partner.

Events causing partner's disassociation, §79-13-601.

Debtor in bankruptcy, §79-13-101.

Deceased partner.

Rights of legal representative, §79-13-403.

Definitions, §79-13-101.

Conversions and mergers, §79-13-901.

Disassociation of partners.

Effect of, §79-13-603.
Events causing, §79-13-601.

Liability of reported partner, §79-13-308.

Partnership business not wound up, §§79-13-701 to 79-13-705.

Continued use of partnership name, §79-13-705.

Disassociated partner's liability to other persons, §79-13-703.

Disassociated partner's power to bind partnership, §79-13-702.

Purchase of disassociated partner's interest, §79-13-701.

Statement of disassociation, §79-13-704.

Partner's rights, §79-13-405.

Wrongful disassociation, §79-13-602.

Dissolution and winding up,

§§79-13-801 to 79-13-807.

Continuation of partnership, §79-13-802.

Disassociation when business not wound up, §§79-13-701 to 79-13-705.

Events causing, §79-13-801.

Partner's liability to other partners after dissolution, §79-13-806.

Partner's power to bind partnership after dissolution, §79-13-804.

Partner's right to compel, §79-13-405.

Resumption of partnership business, §79-13-802.

Right to wind up partnership business, §79-13-803.

Settlement of accounts and contributions among partners, §79-13-807.

Statement of dissolution, §79-13-805.

Distribution.

Defined, §79-13-101.

Distributions in kind, §79-13-402.

Expulsion of partner.

Partner's disassociation, §79-13-601.

PARTNERSHIPS —Cont'd

Foreign limited liability

partnerships, §§79-13-1101 to 79-13-1105.

Activities not constituting transacting business, §79-13-1104.

Defined, §79-13-101.

Failure to qualify.

Effect of, §79-13-1103.

Law governing, §79-13-1101.

Statement of foreign qualification, §79-13-1102.

Formation, §79-13-202.

Incapacity of partner.

Events causing partner's disassociation, §79-13-601.

Injunctions.

Partnership action against partnership or another partner, §79-13-405.

Judgment against partnership.

Liability of partners, §79-13-307.

Judicial dissolution, §79-13-801.

Knowledge and notice, §79-13-102.

Laws governing.

Supplemental principles of law, §79-13-104.

Liens.

Partner's transferable interest, §79-13-504.

Limited liability companies,

§§79-29-101 to 79-29-1204.

Limited liability partnerships,

§§79-13-1001, 79-13-1002.

Defined, §79-13-101.

Foreign limited liability partnerships, §§79-13-1101 to 79-13-1105.

Statement of qualification, §79-13-1001.

Use of abbreviation or name, §79-13-1002.

Limited partnerships.

Generally, §§79-14-101 to 79-14-1107.

Management of partnership,

§79-13-401.

Mergers.

Definitions, §79-13-901.

Effect of, §79-13-906.

Nonexclusiveness of provisions, §79-13-908.

Plan of merger, §79-13-905.

Statement of merger, §79-13-907.

New uniform act.

General provisions, §§79-13-101 to 79-13-1206.

Notification.

What constitutes, §79-13-102.

PARTNERSHIPS —Cont'd

Partners.

Actions against partnership or another partner, §79-13-405.

Actions by and against partners, §79-13-307.

Charging orders.

Transferable interest subject to, §79-13-504.

Deceased partner.

Rights of legal representative, §79-13-403.

Disassociation generally, §§79-13-601 to 79-13-603.

General standards of conduct, §79-13-404.

Knowledge and notice.

What constitutes, §79-13-102.

Liability of purported partner, §79-13-308.

New partner admitted to existing partnership.

Partner's liability, §79-13-306.

Rights and duties, §79-13-401.

Books and records, §79-13-403.

Transferability of interest in partnership, §79-13-502.

Transfer of transferable interest, §79-13-503.

Wrongful disassociation, §79-13-602.

Partnership agreement.

Action against partner for breach, §79-13-405.

Defined, §79-13-101.

Effect of, §79-13-103.

Enforcement action against partnership or another partner, §79-13-405.

Nonwaivable provisions, §79-13-103.

Partnership as distinct entity, §79-13-201.

Partnership at will.

Defined, §79-13-101.

Dissolution, §79-13-801.

Partnership interests.

Defined, §79-13-101.

Partnership property, §§79-13-203, 79-13-204.

Co-ownership of partner, §79-13-501.

Defined, §79-13-101.

Transfer of, §79-13-302.

When partnership is partnership property, §79-13-204.

Partner's interests in the partnership.

Defined, §79-13-101.

PARTNERSHIPS —Cont'd

Partner's liability, §79-13-306.

Liability of partnership, §79-13-305.

Professional corporations.

Uniform partnership act inapplicable, §79-10-4.

Professional limited liability companies, §§79-29-901 to 79-29-933.

Purported partner.

Liability of, §79-13-308.

Savings clause, §79-13-1206.

Severability of act, §79-13-1203.

Short title, §79-13-1202.

Statement of denial, §79-13-304.

Statements.

Defined, §79-13-101.

Execution, §79-13-303.

Execution and filing, §79-13-105.

Filing requirements, §79-13-302.

Title of act, §79-13-1202.

Trade secrets, §79-23-1.

Uniform construction, §79-13-1201.

Voluntary election of early applicability, §79-13-1205.

Withdrawal of partner.

Partner's disassociation, §79-13-601.

Wrongful conduct of partner.

Partner's disassociation, §79-13-601.

PATRIOTIC ORGANIZATIONS.

Regulation of charitable solicitations.

Exemption when solicitation made solely by membership, §79-11-505.

PENSIONS AND RETIREMENT.

Nonprofit corporations.

Power to pay pensions and establish pension plans or pension trusts, §79-11-151.

Professional limited liability companies.

Death or disqualification, compulsory acquisition of membership interest.

Payment of pension benefits, §79-29-911.

PERPETUAL RELIGIOUS SOCIETY TRUST FUNDS.

Establishment, purposes, audit, §§79-11-41 to 79-11-47.

PERPETUITIES, RULE AGAINST.

Investment trust not deemed invalid as violating, §79-15-21.

PERSONAL LIABILITY OF STOCKHOLDERS.

Acts or debts of corporation, §79-4-6.22.

PERSONAL PROPERTY.

Corporations.

Property and franchise sold to satisfy judgment, §79-1-13.

Redemption of franchise by stockholders at time of sale, §79-1-15.

Limited liability company interest, §79-29-701.

Limited partnerships.

Partnership interest is personal property, §79-14-701.

PETITIONS.

Agricultural cooperative marketing associations.

Petition for removal of officer or director, §79-19-27.

Corporations.

Compelling secretary of state to file document, §79-4-1.26.

Nonprofit corporations.

Alternative method for calling or conducting meeting, §79-11-131.

Compelling secretary of state to file document, §79-11-117.

Nonprofit corporations.

Alternative method for calling or conducting meeting, §79-11-131.

Compelling secretary of state to file document, §79-11-117.

PHYSICIANS AND SURGEONS.

Corporations.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Limited liability companies.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional service defined to include services by physician or surgeon, §79-29-902.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

PHYSICIANS AND SURGEONS

—Cont'd

Professional limited liability companies —Cont'd

Professional service defined to include services by physician or surgeon, §79-29-902.

PLANTS.

Aquaculture, §§79-22-1 to 79-22-35.

PLEADINGS.

Limited partnerships.

Derivative actions, §79-14-1003.

POLITICAL RIGHTS.

Corporation interfering with employees rights, §79-1-9.

POULTRY AND POULTRY PRODUCTS MARKETING ASSOCIATIONS.

Agricultural associations generally, §§79-17-1 to 79-17-41.

Cooperative marketing associations generally, §§79-19-1 to 79-19-63.

PREEMPTIVE RIGHTS OF SHAREHOLDERS.

Acquisition of unissued shares, §79-4-6.30.

PREFERRED STOCK.

Agricultural associations.

Incorporated associations issuing, §79-17-23.

Agricultural cooperative marketing associations, §79-19-25.

Public utilities.

Vote on amendment of articles, §79-4-10.04.

PRESUMPTIONS.

Marketing contracts with agricultural cooperative marketing association.

Products of members, §79-19-33.

PRISON TERMS.

Charitable solicitations in violation of provisions regulating, §79-11-529.

PRIVATE FOUNDATIONS, §§79-11-51 to 79-11-61.

Amendment of articles of incorporation to exclude applicability of provisions, §79-11-57.

Applicability of provisions when contrary to articles of organization, §79-11-55.

PRIVATE FOUNDATIONS —Cont'd
Courts or attorney general's rights and powers not impaired, §79-11-59.
Distribution of amounts to avoid tax liability, §79-11-53.
Excessive business holdings prohibited, §79-11-51.
Internal revenue code, references to, §79-11-61.
Investment limitations, §79-11-51.
Prohibited acts, §79-11-51.
References to United States internal revenue code, §79-11-61.
Rights and powers of courts and attorney general not impaired, §79-11-59.
Self-dealing prohibited, §79-11-51.
Taxable expenditures prohibited, §79-11-51.

PRIVILEGED COMMUNICATIONS.
Limited liability companies.
 Communications between individual rendering services and person receiving services, §79-29-919.
 Confidential relationship between person rendering services and client or patient, §79-29-918.

Professional corporations.
 Privilege applicable to communications between individual rendering service and person receiving service, §79-10-65.

PROFESSIONAL CORPORATIONS, §§79-10-1 to 79-10-117.
Amendment of articles of incorporation.
 Termination of professional activities, §79-10-83.
Annual report for secretary of state, §79-10-101.
Applicability of business corporation act, §79-10-3.
Applicability of provisions to existing corporations, §79-10-111.
Appraisal of shares.
 Compulsory acquisition of shares after death or disqualification of shareholder, §§79-10-41, 79-10-43.
Articles of incorporation, §79-10-11.
 Amendment.
 Termination of professional activities, §79-10-83.
Association member acting as professional corporation, §79-10-15.

PROFESSIONAL CORPORATIONS —Cont'd
Attorney general.
 Commencing proceeding to dissolve, §79-10-85.
Business corporation act.
 Applicability to professional corporations, §79-10-3.
 Generally, §§79-4-1.01 to 79-4-17.04.
 General powers as enumerated in, §79-10-15.
Ceasing to render professional services.
 Amendment of articles of incorporation to delete references, §79-10-83.
Compulsory acquisition of shares.
 Death or disqualification of shareholder, §§79-10-37 to 79-10-43.
Confidentiality of relationship between individual rendering services and client or patient, §79-10-63.
Death of shareholder.
 Compulsory acquisition of shares after death, §§79-10-37 to 79-10-43.
Definitions, §79-10-5.
Disqualification of shareholder.
 Cancellation of disqualified shares, §79-10-45.
 Compulsory acquisition of shares after disqualification, §§79-10-37 to 79-10-43.
Dissolution.
 Judicial dissolution, §79-10-85.
Election of professional corporation status, §79-10-11.
Existing corporations.
 Applicability of provisions to, §79-10-111.
Fair value of shares.
 Compulsory acquisition after death or disqualification of shareholder, §§79-10-37 to 79-10-43.
Foreign professional corporations.
 Certificate of authority.
 Application, §79-10-93.
 Required to transact business in state, requirements for obtaining, §79-10-91.
 Revocation, §79-10-95.
General partner acting as professional corporation, §79-10-15.
General powers as enumerated in business corporation act, §79-10-15.

PROFESSIONAL CORPORATIONS

- Cont'd
- Incorporation by election of professional corporation status,** §79-10-11.
- Investing funds in real estate, mortgages, securities or other investments,** §79-10-19.
- Joint venture acting as professional corporation,** §79-10-15.
- Judicial dissolution,** §79-10-85.
- Legislative reservation of power to amend or repeal provisions,** §79-10-113.
- License or other authority required to render professional services,** §79-10-17.
- Licensing authority.**
 - Defined, §79-10-5.
 - Regulatory jurisdiction not restricted, §79-10-105.
 - Rulemaking authority, §79-10-103.
- Mergers,** §79-10-81.
- Mississippi professional corporation act,** §79-10-1.
- Names,** §79-10-21.
- Negligent or wrongful acts, responsibility,** §79-10-67.
- Partnerships.**
 - Uniform partnership act inapplicable, §79-10-4.
- Power of legislature reserved to amend or repeal provisions,** §79-10-113.
 - General powers, business corporation act, §79-10-15.
- Privilege applicable to communications between individual rendering service and person receiving service,** §79-10-65.
- Professional service defined,** §79-10-5.
- Prohibited activities,** §79-10-19.
- Promoter acting as professional corporation,** §79-10-15.
- Purposes,** §79-10-13.
- Regulatory jurisdiction of licensing authority not restricted,** §79-10-105.
- Rendering professional services.**
 - Ceasing to render, amendment of articles, §79-10-83.
 - License or other authority required by individuals, §79-10-17.

PROFESSIONAL CORPORATIONS

- Cont'd
- Rendering professional services**
 - Cont'd
 - Purposes, §79-10-13.
 - Responsibility for negligent or wrongful act or omission, §79-10-67.
 - Services rendered other than authorized by articles of incorporation prohibited, §79-10-17.
- Reports.**
 - Annual report for secretary of state, §79-10-101.
- Responsibility for negligent or wrongful act or omission when rendering professional services,** §79-10-67.
- Rulemaking by licensing authority,** §79-10-103.
- Savings provisions,** §79-10-115.
- Secretary of state.**
 - Annual report for secretary, §79-10-101.
 - Filing articles of incorporation with secretary, §79-10-11.
- Severability of provisions,** §79-10-117.
- Shares, §§79-10-31 to 79-10-45.**
 - Appraisal of shares.
 - Compulsory acquisition after death or disqualification of shareholder, §§79-10-41, 79-10-43.
 - Cancellation of disqualified shares, §79-10-45.
 - Compulsory acquisition after death or disqualification, §79-10-37.
 - Acceptance of corporation's offer or demand after notice, §79-10-39.
 - Court action to appraise shares, §79-10-41.
 - Court costs and fees of experts, §79-10-43.
 - Notice by corporation, §79-10-39.
 - Notice by disqualified shareholder, §79-10-37.
 - Payment after acceptance of corporate offer or demand, §79-10-39.
 - Price controls if previously established, §79-10-37.
 - Procedure for acquiring, §79-10-39.
 - Provision in articles of incorporation or bylaws or private agreements specifically enforced, §79-10-37.

PROFESSIONAL CORPORATIONS

—Cont'd

Shares —Cont'd

Death of shareholder.

Compulsory acquisition of shares,
§§79-10-37 to 79-10-43.

Disqualification of shareholder.

Cancellation of disqualified shares,
§79-10-45.

Compulsory acquisition of shares,
§§79-10-37 to 79-10-43.

Issuance of shares, fractional shares
and other rights or options,
§79-10-31.

Notice of professional corporation
status on share certificates,
§79-10-33.

Pledge of shares, §79-10-35.

Restrictions on conditions on authority
to issue, §79-10-31.

Statement on certificate indicating
professional corporation status,
§79-10-33.

Transfer restrictions, §79-10-35.

Uncertificated shares issued.

Statement of corporation status sent
to shareholders, §79-10-33.

Voting, §79-10-61.

**Termination of professional
activities.**

Amendment of articles of incorporation
to delete references, §79-10-83.

**Trust acting as professional
corporation, §79-10-15.**

**Two or more professions, rendering
professional services within,
§79-10-13.**

Voting of shares, §79-10-61.

Voting trusts, §79-10-61.

PROFESSIONAL FUND-RAISERS.

**Accounting after solicitation
campaign, §79-11-515.**

Annual report, §79-11-513.

Bond, §79-11-513.

**Contracts between fund-raiser and
charitable organization.**

Requirements, filing with secretary of
state, §79-11-515.

Defined, §79-11-501.

**Deposit of contribution after
receipt, §79-11-515.**

**Disclosure requirements prior to
solicitation, §79-11-523.**

Registration, §79-11-513.

PROFESSIONAL FUND-RAISERS

—Cont'd

**Regulation of charitable
solicitations generally,
§§79-11-501 to 79-11-529.**

Reporting requirements, §79-11-515.

**Report on solicitation campaign
prior to commencing
solicitations, §79-11-515.**

**PROFESSIONAL LIMITED
LIABILITY COMPANIES,
§§79-29-901 to 79-29-933.**

**Acquisition of membership interest
after death or disqualification.**

Compulsory acquisition, §§79-29-911 to
79-29-914.

**Amendment of certificate of
formation electing status,
§79-29-903.**

**Applicability of other provisions of
limited liability company
chapter, §79-29-901.**

**Applicability of provisions to
existing companies, §79-29-933.**

**Attorney general commencing
proceeding to dissolve,
§79-29-923.**

**Cancellation of disqualified
member's interest, §79-29-915.**

**Ceasing to render professional
services, §79-29-922.**

Certificate of formation.

Amendment electing status,
§79-29-903.

Forming company by delivering to
secretary of state, §79-29-903.

**Compulsory acquisition of
membership interest after death
or disqualification, §79-29-911.**

Acceptance of offer, §79-29-912.

Appraisal of interest, court action,
§79-29-913.

Costs and fees of experts,
§79-29-914.

No further interest after payment,
§79-29-912.

Notice offering to purchase
membership interest, §79-29-912.

Pension benefits or deferred
compensation.

Company not prevented or relieved
from paying, §79-29-911.

Price established in accordance with
certificate of formation or
company agreement or private
agreement, §79-29-911.

PROFESSIONAL LIMITED

LIABILITY COMPANIES —Cont'd

Compulsory acquisition of membership interest after death or disqualification —Cont'd

Procedure for acquiring, §79-29-912.

Rejection of offer by disqualified person, §79-29-911.

Specific enforcement of provisions for acquisition, §79-29-911.

Confidential relationship between person rendering services and client or patient, §79-29-918.

Death of member compulsory acquisition of membership interest, §§79-29-911 to 79-29-914.

Definitions, §79-29-902.

Disqualification of member.

Cancellation of disqualified member's interest, §79-29-915.

Compulsory acquisition of membership interest, §§79-29-911 to 79-29-914.

Dissolution.

Judicial dissolution, §79-29-923.

Election of professional limited liability company status.

Amendment of certificate of formation, §79-29-903.

Existing companies, applicability of provisions, §79-29-933.

Foreign professional limited liability companies.

Certificate of authority.

Application, §79-29-925.

Required to transact business, §79-29-924.

Revocation, §79-29-926.

Investments authorized, §79-29-907.

Judicial dissolution, §79-29-923.

Licensed individuals rendering professional services, §79-29-906.

Licensing authorities.

Regulatory jurisdiction, §79-29-931.

Rules, promulgation, §79-29-930.

Membership generally, §79-29-909.

Merger, §79-29-921.

Names, §79-29-908.

Negligent or wrongful act or omission in rendering services.

Responsibility for, §79-29-920.

Partnership, joint venture, trust or other entity.

Company being member in, §79-29-905.

Powers, §79-29-905.

PROFESSIONAL LIMITED

LIABILITY COMPANIES —Cont'd

Privileged communications between individual rendering services and person receiving services, §79-29-919.

Prohibited activities, §79-29-907.

Proxies.

Qualified person appointed proxy to vote member's interest, §79-29-917.

Purposes of company, §79-29-904.

Regulatory jurisdictional licensing authority, §79-29-931.

Rendering services, requirement, §79-29-906.

Responsibility for professional services rendered, §79-29-920.

Restricting or conditioning authority to issue membership, §79-29-909.

Restrictions on transferring membership interest, §79-29-910.

Rulemaking by licensing authority, §79-29-930.

Termination of professional activities, §79-29-922.

Transfer of membership interest, §79-29-910.

Two or more professions, rendering professional services in, §79-29-904.

Voting of membership interest, §79-29-917.

Voting trust with respect to membership interest, §79-29-917.

Who may become member, §79-29-909.

Wrongful act or omission in rendering services.

Responsibility for, §79-29-920.

PROFESSIONAL SOLICITOR

EMPLOYED BY

PROFESSIONAL FUND-RAISER.

Disclosure requirements prior to solicitation, §79-11-523.

Professional solicitor defined, §79-11-501.

Registration, §79-11-517.

Regulation of charitable contributions generally, §§79-11-501 to 79-11-529.

PROFIT SHARING.

Limited liability companies.

Allocation among members, §79-29-503.

PROFIT SHARING —Cont'd
Limited partnerships, §79-14-503.
 General partner, §79-14-404.

PROPERTY TAXES.

Exemptions.
 Agriculture.
 Cooperative marketing associations,
 §79-19-53.
 Small business investment company
 notes, §79-7-5.

PROPRIETARY INFORMATION.

**Commercial and financial
 information exempt from
 provisions of public access**,
 §79-23-1.

PROXIES.

**Fiduciary executing without order
 or direction of court**, §79-1-5.
Irrevocable appointment of proxy.
 Appointment coupled with interest,
 §79-4-7.22.

Nonprofit corporations.

Acceptance or rejection of proxy
 appointment, §79-11-227.
 Appointment and revocation of proxy
 to vote or act for member,
 §79-11-221.

**Professional limited liability
 companies.**

Qualified person appointed proxy to
 vote member's interest,
 §79-29-917.

Revocable appointment of proxy,
 §79-4-7.22.

Shareholder entitlement to vote by,
 §79-4-7.22.

PRUDENT PERSON RULE.

**Director of corporation to act with
 care as ordinary prudent
 person**, §79-4-8.30.

**Governing board of institutional
 funds**, §79-11-611.

Limited liability companies.

Manager's duty to act as ordinary
 prudent person, §79-29-402.

Officers of corporation, §79-4-8.42.

PUBLICATION OF NOTICE.

**Agricultural cooperative marketing
 associations.**
 Notice of first meeting of persons at
 interest, §79-19-11.

**PUBLICATION OF NOTICE —Cont'd
 Corporations.**

Claims against corporation on
 dissolution.
 Notice of dissolution and request to
 present claim, §79-4-14.07.
 Communicating notice by publication
 in newspaper, §79-4-1.41.
 Nonprofit corporations.
 Communicating notice by newspaper
 or general circulation,
 §79-11-129.

Dissolution of corporation.

Notice of dissolution and request to
 present claim, §79-4-14.07.

Limited liability companies.

Unknown claims against dissolved
 company.
 Notice of dissolution and request to
 present claim, §79-29-807.

Nonprofit corporations.

Communicating notice by, §79-11-129.

PUBLIC FUNDS.

**Perpetual religious society trust
 funds**, §§79-11-41 to
 79-11-47.

PUBLIC SAFETY ORGANIZATIONS.

Regulation of solicitations generally,
 §§79-11-501 to 79-11-529.

PUBLIC UTILITIES.

**Amendment of articles of
 incorporation of utility.**

Voting on amendments by voting
 groups.
 Inapplicability to public utility
 subject to public utility holding
 company act, §79-4-10.04.

**PUBLIC UTILITY HOLDING
 COMPANY ACT.**

**Amendment of articles of
 incorporation of public utility
 subject to.**

Voting on amendments by voting
 groups, inapplicability of
 provisions, §79-4-10.04.

Q

**QUALIFIED CHARITABLE GIFT
 ANNUITIES**, §§79-11-651 to
 79-11-661.

R

RADIO.

Nonprofit corporations.

Communicating notice by, §79-11-129.

REAL ESTATE INVESTMENT TRUSTS.

Investments by governing board of institutional funds, §79-11-607.

REAL PROPERTY.

Religious societies.

Divesting or encumbering, number of members required to be present at meeting, §79-11-31.

Power to own certain real property generally, §79-11-33.

Title vest in society upon organization, §79-11-31.

RECEIVERS.

Corporations.

Dissolution of corporations.

Judicial dissolution, appointment, §79-4-14.32.

Nonprofit corporations.

Court ordered dissolution, appointment, §§79-11-357, 79-11-359.

Shareholder action to appoint, §79-4-7.48.

RECORDATION OF DOCUMENTS.

Declaration of trust.

Investment trusts, §79-15-19.

RECORD DATE.

Business corporations, §79-4-1.40.

Determining shareholders entitled to distribution, §79-4-6.40.

Determining shareholders entitled to notice of meeting, §79-4-7.07.

Nonprofit corporations, §79-11-127.

Members entitled to notice, §79-11-209.

RECORDS.

Charitable organizations soliciting funds in states, §79-11-518.

Corporations, §79-4-16.01.

Inspection by stockholders, §§79-4-16.02 to 79-4-16.04.

Inspection of records by directors, §79-4-16.05.

Nonprofit corporations, §79-11-283.

Inspection by members, §§79-11-285 to 79-11-289.

RECORDS —Cont'd

Limited liability companies, §79-29-107.

Inspection and copying, members' rights, §79-29-308.

Limited partnerships, §79-14-105.

Nonprofit corporations, §79-11-283.

Inspection of records by members, §§79-11-285 to 79-11-289.

Professional fund-raisers, §79-11-515.

REDEMPTION.

Corporate property and franchise sold to satisfy judgment.

Redemption of franchise, §79-1-15.

REGISTERED AGENT.

Business corporations, §79-4-5.01.

Foreign corporations, §§79-4-15.07 to 79-4-15.10.

Foreign business trusts, §§79-16-17 to 79-16-21.

Foreign investment trusts,

§§79-15-115 to 79-15-119.

Limited liability companies, §79-29-106.

Agents for service of process, notice or demand, §79-29-111.

Nonprofit corporations, §§79-11-163 to 79-11-169.

Foreign corporations, §§79-11-375 to 79-11-381.

REGISTERED OFFICE.

Business corporations, §79-4-5.01.

Foreign corporations, §§79-4-15.07, 79-4-15.08.

Foreign business trusts, §§79-16-17, 79-16-19.

Foreign investment trusts,

§§79-15-115, 79-15-117.

Limited liability companies, §79-29-106.

Nonprofit corporations, §§79-11-163, 79-11-165.

Foreign corporations, §§79-11-375, 79-11-377.

REGISTRATION.

Charitable organizations.

Regulation of charitable solicitations generally, §§79-11-501 to 79-11-529.

Corporations.

Foreign corporations name, §79-4-4.03.

Nonprofit corporations, §79-11-161.

Foreign business trusts.

Certificate of authority generally, §§79-16-1 to 79-16-35.

REGISTRATION —Cont'd

Foreign corporations.

Name, §79-4-4.03.

Nonprofit corporations.

Name, §79-11-161.

Foreign investment trusts.

Certificate of authority generally,

§§79-15-101 to 79-15-139.

Foreign limited liability companies,

§§79-29-1001 to 79-29-1010.

Professional limited liability companies.

Certificate of authority, §§79-29-924 to 79-29-926.

Foreign limited partnerships,

§§79-14-901 to 79-14-909.

Fund-raising counsel, §79-11-513.

Limited liability companies.

Foreign limited liability companies,

§§79-29-1001 to 79-29-1010.

Limited partnerships.

Foreign limited partnerships,

§§79-14-901 to 79-14-909.

Nonprofit corporations.

Foreign corporations.

Name, §79-11-161.

Professional fund-raiser, §79-11-513.

Professional solicitor employed by professional fund-raiser, §79-11-517.

RELEASES.

Restriction on gift instrument.

Governing board of institutional fund obtaining, §79-11-613.

RELIGION.

Religious organizations, §§79-11-31 to 79-11-47.

RELIGIOUS ORGANIZATIONS,

§§79-11-31 to 79-11-47.

Actions by or against in society

name or appellation, §79-11-31.

Applicability of nonprofit

corporation act, §79-11-401.

Provisions inapplicable, §79-11-403.

Religious doctrine controlling, §79-11-403.

Campground or assembly buildings, ownership, §79-11-33.

Cemetery lands, ownership, §79-11-33.

Child care facility, ownership, §79-11-33.

Community facility, ownership, §79-11-33.

RELIGIOUS ORGANIZATIONS

—Cont'd

Conveying or encumbering real property.

Number of members required to be present, §79-11-31.

Defined, §79-11-127.

Denominational headquarters

buildings, ownership, §79-11-33.

Denomination or congregation

associating together, §79-11-31.

Divesting or encumbering real property.

Number of members to be present, §79-11-31.

Educational facility, ownership, §79-11-33.

Election or appointment of officers, trustees or management from membership, §79-11-31.

Hospital or infirmary and nurses' home, ownership, §79-11-33.

House of worship, ownership, §79-11-33.

Management of institutional funds.

Uniform act, §§79-11-601 to 79-11-617.

Nonprofit corporations generally, §§79-11-101 to 79-11-403.

Number of members required to divest or encumber real property, §79-11-31.

Organization, §79-11-31.

Orphanages, ownership, §79-11-33.

Ownership of real property, §79-11-33.

Parish house, ownership, §79-11-33.

Parking areas, ownership of land used for, §79-11-33.

Perpetual religious society trust funds.

Accounting, §79-11-47.

Auditing procedures, §79-11-47.

Chancery court to administer, §79-11-45.

Creation and establishment of irrevocable fund, §79-11-45.

Designation, §79-11-43.

Election to be subject to provisions, §79-11-41.

Establishment, purposes, audit, §§79-11-41 to 79-11-47.

Purposes of fund, §79-11-45.

Religious society defined, §79-11-41.

Reporting requirements, §79-11-47.

Power to own certain property, §79-11-33.

RELIGIOUS ORGANIZATIONS

—Cont'd

Record of proceedings, §79-11-31.

Residence for minister, bishop or representative, ownership, §79-11-33.

School, college or seminary buildings, ownership, §79-11-33.

Service of process, §79-11-31.

Sunday school facility, ownership, §79-11-33.

Title to real property.

Power to own property generally, §79-11-33.

Vesting, §79-11-31.

RELIGIOUS SOCIETIES.

Generally, §§79-11-31 to 79-11-47.

REMOVAL ORDERS.

Corporations, director, §§79-4-8.09, 79-11-249.

REORGANIZATION OF CORPORATIONS.

Amendment of articles of incorporation pursuant to plan, §79-4-10.08.

Nonprofit corporations.

Amendments to articles to carry out court ordered reorganization, §79-11-309.

REPLEVIN.

Agricultural cooperative marketing associations.

Liquidated damages recovered, §79-19-59.

Maintenance by association, §79-19-57.

REPORTS.

Charitable organizations soliciting contributions, §79-11-507.

Corporations.

Annual report for secretary of state, §79-4-16.22.

Professional corporations, §79-10-101.

Financial statements for shareholders, §79-4-16.20.

Indemnification or advance of expenses to director, §79-4-16.21.

Issuance of shares for promissory note or promise to render services, §79-4-16.21.

Nonprofit corporations.

Status report delivered to secretary of state, §79-11-391.

REPORTS —Cont'd

Foreign corporations.

Annual report for secretary of state, §79-4-16.22.

Fund-raising counsel, §79-11-513.

Nonprofit corporations.

Status report delivered to secretary of state, §79-11-391.

Perpetual religious society trust funds, §79-11-47.

Professional corporations.

Annual report for secretary of state, §79-10-101.

Professional fund-raiser, §79-11-513.

Rural waterworks corporations.

Financial reports, §79-11-394.

RESCISSION.

Charitable organizations violating provisions as to charitable solicitations.

Issuance by attorney general, §79-11-509.

Subscription for shares before incorporation.

Subscriber defaulting in payment of money, §79-4-6.20.

RESERVATION OF NAME.

Business corporation act, §79-4-4.02.

Limited liability companies, §79-29-105.

Limited partnerships, §79-14-103.

Nonprofit corporation, §79-11-159.

RESTATED ARTICLES OF

INCORPORATION, §79-4-10.07.

Nonprofit corporations, §79-11-307.

RESTATED CERTIFICATE OF FORMATION.

Limited liability companies, §79-29-203.

RESTITUTION.

Charitable solicitations, violations, §79-11-509.

RESTRAINTS ON ALIENATION.

Investment trust not deemed invalid as violating, §79-15-21.

RULE AGAINST PERPETUITIES.

Investment trust not deemed invalid as violating, §79-15-21.

RURAL WATERWORKS CORPORATIONS.

Distribution of excess revenues, requirements, §79-11-393.

RURAL WATERWORKS

CORPORATIONS —Cont'd

Financial reports, §79-11-394.

Notice of annual meeting to subscribers, §79-11-394.

Roster of members, requirements, §79-11-393.

Special requirements to obtain federal tax exemptions, §79-11-393.

S

SALE OF MEMBERSHIP LISTS.

Nonprofit corporations, restrictions, §79-11-291.

SALES.

Corporate assets.

Disposition of assets.

Appraisal rights of shareholders, §§79-4-13.01 to 79-4-13.31.

Not requiring shareholder approval, §79-4-12.01.

Requiring shareholder approval, §79-4-12.02.

Nonprofit corporations.

All or substantially all property of corporation.

In regular course of business, §79-11-329.

Not in regular course of business, §79-11-331.

Nonprofit corporations.

All or substantially all property of corporation.

In regular course of business, §79-11-329.

Not in regular course of business, §79-11-331.

SALT WATER PRODUCTS

CO-OPERATIVE MARKETING ASSOCIATIONS.

Fresh and salt water cooperatives generally, §§79-21-51 to 79-21-67.

SATISFACTION OF JUDGMENTS.

Corporate property and franchise sold, §79-1-13.

Redemption of franchise, §79-1-15.

SCHOOLS AND EDUCATION.

Religious societies, ecclesiastical bodies or congregations.

Power to own educational facilities or buildings used by school, college or seminary, §79-11-33.

SCIENTIFIC GIFTS.

Nonprofit corporations, §79-11-151.

SCRIP.

Corporations issuing in registered or bearer form, §79-4-6.04.

SECRETARY OF STATE.

Agricultural associations.

Filing articles with, §79-17-13.

Agricultural cooperative marketing associations.

Articles of association, filing, §79-19-13.

Amendment, §79-19-15.

Charitable solicitations.

Regulation generally, §§79-11-501 to 79-11-529.

Corporations.

Administrative dissolution of corporations, §§79-4-14.20 to 79-4-14.23.

Annual report for secretary, §79-4-16.22.

Professional corporations, §79-10-101.

Articles of amendment.

Filed with secretary, §79-4-10.06.

Filing with secretary before issuing shares of class or series, §79-4-6.02.

Articles of dissolution filed with secretary.

Voluntary dissolution, §§79-4-14.01, 79-4-14.03.

Articles of revocation of dissolution filed with secretary, §79-4-14.04.

Certificate of authority, foreign corporation delivering to, §79-4-15.03.

Amended certificate, §79-4-15.04.

Changing registered office or registered agent, filing statement with secretary.

Foreign corporations, §79-4-15.08.

Fees for filing service and copying, §79-4-1.22.

Filing documents with secretary generally, §§79-4-1.20 to 79-4-1.29.

Nonprofit corporations, §§79-11-105 to 79-11-123.

Nonprofit corporations.

Administrative dissolution commencing proceeding, §79-11-347.

Application for certificate of authority by foreign corporation, filing with secretary, §79-11-367.

SECRETARY OF STATE —Cont'd

Corporations —Cont'd

Nonprofit corporations —Cont'd

- Articles of amendment, filing with secretary, §79-11-305.
- Articles of dissolution, filing with, §79-11-337.
- Articles of merger, filing with secretary, §79-11-323.
- Articles of revocation of dissolution, filing with, §79-11-339.
- Certificate of existence, application to secretary, §79-11-121.
- Changing registered office or registered agent, filing statement, §79-11-165.
- Court ordered reorganization, filing amendments to articles, §79-11-309.
- Fees for filing documents, §79-11-109.
- Filing of documents with secretary generally, §§79-11-105 to 79-11-123.
- Powers reasonably necessary to perform duties, §79-11-125.
- Resignation of registered agent, filing statement, §79-11-167.
- Restatement of articles, filing with secretary, §79-11-307.
- Status report delivered to secretary, §79-11-391.
- Powers reasonably necessary to perform duties, §79-4-1.30.
- Reinstatement of foreign corporation's certificate of authority after revocation, §79-4-15.32.
- Resignation of registered agent, filing statement with secretary.
 - Foreign corporations, §79-4-15.09.
- Service of process on secretary.
 - Revocation of certificate of authority of foreign corporation, §79-4-15.31.
- Statement of change of registered office or registered agent.
 - Filing statement with, §79-4-5.02.
- Statement of resignation of registered agent.
 - Filing with secretary, §79-4-5.03.

Foreign business trusts.

- Certificate of withdrawal, filing application with, issuance by, §§79-16-23, 79-16-25.
- Correcting statement to certificate of authority, filing with, §79-16-15.

SECRETARY OF STATE —Cont'd

Foreign business trusts —Cont'd

- Delivery of application for certificate of authority, §79-16-11.
 - Fees charged, §79-16-33.
 - Issuance of certificate of authority, §79-16-13.
 - Revocation of certificate of authority, §§79-16-27, 79-16-29.
- Foreign corporations.**
- Annual report, §79-4-16.22.
 - Certificate of authority delivered to secretary.
 - Amended certificate, §79-4-15.04.
 - Certificate of withdrawal, §79-4-15.20.
 - Changing registered office or registered agent, filing statement, §79-4-15.08.
 - Delivering certificate of authority to secretary, §79-4-15.03.
 - Reinstatement of certificate of authority after revocation, §79-4-15.32.
 - Resignation of registered agent, filing statement with secretary, §79-4-15.09.
 - Service of process on secretary.
 - Revocation of certificate of authority, §79-4-15.31.

Foreign investment trusts.

- Appointment as agent for service of process, notice or demand, §79-15-119.
- Certificate of withdrawal, filing, issuance, §§79-15-125, 79-15-127.
- Delivery of certificate of authority and declaration of trust to, §79-15-111.
- Disbursement of funds collected under provisions, §79-15-137.
- Fees charged, §79-15-135.
- Filing amendment of declaration of trust, §79-15-121.

Foreign limited partnerships.

- Application for registration, §79-14-902.
- Appointment as agent for service of process.
 - Transacting business in state without registration, §79-14-907.
- Cancellation of registration, §79-14-906.
- Issuance of registration, §79-14-903.

Limited liability companies.

- Authorization to use name not distinguishable upon records, application, §79-29-104.

SECRETARY OF STATE —Cont'd
Limited liability companies —Cont'd
 Certificate of formation, delivery to,
 §79-29-201.
 Amendment to certificate,
 §79-29-202.
 Fees charged, §79-29-1203.
 Filing of certificates with secretary
 generally, §79-29-207.
 Powers reasonably necessary to
 perform duties, §79-29-1204.
 Reservation of name, application,
 §79-29-105.
 Service of process on secretary,
 §79-29-111.
Limited partnerships.
 Agent for service of process.
 Foreign limited partnership.
 Transacting business without
 registration, §79-14-907.
 Application for registration by foreign
 limited partnership, filing,
 §79-14-902.
 Authorization to use name not
 distinguishable upon records,
 application, §79-14-102.
 Cancellation of registration by foreign
 limited partnership, certificate,
 §79-14-906.
 Certificate of dissolution or
 cancellation, filing, §79-14-203.
 Certificate of limited partnership,
 filing with secretary, §79-14-201.
 Amended certificate, §79-14-202.
 Fees charged by secretary,
 §79-14-1104.
 Filing of required certificates with
 secretary, §79-14-206.
 Issuance of registration for foreign
 limited partnership, §79-14-903.
 Reservation of name, application,
 §79-14-103.
Nonprofit corporations.
 Administrative dissolution,
 commencing proceeding,
 §79-11-347.
 Application for certificate of authority
 by foreign corporation, filing with
 secretary, §79-11-367.
 Articles of amendment, filing with
 secretary, §79-11-305.
 Articles of dissolution, filing with,
 §79-11-337.
 Articles of merger, filing with
 secretary, §79-11-323.

SECRETARY OF STATE —Cont'd
Nonprofit corporations —Cont'd
 Articles of revocation of dissolution,
 filing with, §79-11-339.
 Certificate of existence, application to
 secretary, §79-11-121.
 Changing registered office or
 registered agent, filing statement,
 §79-11-165.
 Court ordered reorganization, filing
 amendments to articles,
 §79-11-309.
 Dissolution by court order, §79-11-355.
 Fees for filing, serving process upon
 secretary, copying and certifying
 copy of filed documents,
 §79-11-109.
 Filing of documents with secretary
 generally, §§79-11-105 to
 79-11-123.
 Powers reasonably necessary to
 perform duties, §79-11-125.
 Resignation of registered agent, filing
 statement, §79-11-167.
 Restatement of articles of
 incorporation, filing with
 secretary, §79-11-307.
 Status report delivered to secretary,
 §79-11-391.
Professional corporations.
 Annual report for secretary,
 §79-10-101.
 Filing articles of incorporation with
 secretary, §79-10-11.
Service of process on secretary.
 Charitable organization from out of
 state soliciting funds in state,
 §79-11-511.
 Foreign limited partnerships.
 Transacting business in state
 without registration, §79-14-907.
 Limited liability company, §79-29-111.
 Revocation of certificate of authority of
 foreign corporation, §79-4-15.31.
Solicitations by charities.
 Regulation generally, §§79-11-501 to
 79-11-529.
SEMINARIES.
**Religious societies, ecclesiastical
 bodies or congregations.**
 Power to own, §79-11-33.
**SERVICE OF NOTICE, PROCESS
 AND OTHER PAPERS.**
 Charitable organization from out of
 state soliciting funds in state,
 §79-11-511.

**SERVICE OF NOTICE, PROCESS
AND OTHER PAPERS —Cont'd**

Corporations.

- Communicating notice generally,
§79-4-1.41.
- Foreign corporations, §79-4-15.10.
- Revocation of certificate of authority.
Service of process on secretary of
state, §79-4-15.31.
- Withdrawal from state, §79-4-15.20.
- Nonprofit corporations, §79-11-169.
- Foreign corporations, §79-11-381.
- No registered agent or agent not
reasonably serviced, §79-4-5.04.
- Perfected service, §79-4-5.04.
- Registered agent.

Corporation's agent for service of
process, notice or demand,
§79-4-5.04.

Secretary of state as agent for service.
Fee collected, §79-4-1.22.

Foreign business trusts, §79-16-21.

Foreign corporations, §79-4-15.10.

- Nonprofit corporations, §79-11-381.
- Revocation of certificate of authority.
Service of process on secretary of
state, §79-4-15.31.
- Withdrawal from state, §79-4-15.20.

**Foreign investment trusts,
§79-15-119.**

Foreign limited partnerships.

- Appointment of secretary of state as
registered agent for service.
- Transacting business without
registration, §79-14-907.

Investment trusts.

- Trustees severally agents for,
§79-15-23.

**Limited liability companies,
§79-29-111.**

Limited partnerships.

- Foreign limited partnerships.
- Appointment of secretary of state as
registered agent for service.
- Transacting business without
registration, §79-14-907.
- Registered agent for service of process,
§79-14-104.

Nonprofit corporations, §79-11-169.

Foreign corporations, §79-11-381.

Partnerships.

- Merger of partnership entities,
§79-13-906.

Secretary of state, service on.

- Charitable organization from out of
state soliciting funds in state,
§79-11-511.

**SERVICE OF NOTICE, PROCESS
AND OTHER PAPERS —Cont'd**

**Secretary of state, service on
—Cont'd**

- Foreign corporations, withdrawal from
state, §79-4-15.20.
- Foreign limited partnerships.
Transacting business in state
without registration, §79-14-907.
- Limited liability companies.
Company without registered agent
or registered agent can't be
served, §79-29-111.
- Revocation of certificate of authority of
foreign corporation, §79-4-15.31.

SETTLEMENT.

Derivative proceedings.

- Court approval for settlement or
discontinuance, §79-4-7.45.
- Limited liability companies,
§79-29-1105.

Limited liability companies.

- Derivative proceedings, §79-29-1105.

SHARE OF PROFITS.

Limited liability companies.

- Allocation among members,
§79-29-503.

Limited partnerships, §79-14-503.

- General partner, §79-14-404.

SHARES AND SHAREHOLDERS.

Business corporations.

- Generally, §§79-4-1.01 to 79-4-17.04.

SMALL BUSINESSES.

**Investment companies, §§79-7-1 to
79-7-7.**

**SMALL BUSINESS INVESTMENT
ACT OF 1958.**

**Small business investment
companies organized under
provisions, §§79-7-1 to 79-7-7.**

**SMALL BUSINESS INVESTMENT
COMPANIES, §§79-7-1 to 79-7-7.**

**Exemption of notes and other
evidences of indebtedness from
ad valorem taxes, §79-7-5.**

Fees and charges for loans, §79-7-7.

Incorporation, §79-7-1.

**Limitation on fees and charges for
loans, §79-7-7.**

Limitations on powers, §79-7-3.

Powers, §79-7-3.

SOCIAL SOCIETIES.

Regulation of charitable solicitations.

Exemption when solicitation made solely by membership, §79-11-505.

SOLICITATION.

Charitable solicitations generally, §§79-11-501 to 79-11-529.

SPECIFIC PERFORMANCE.

Professional corporations.

Compulsory acquisition of shares after death or disqualification of shareholder, §79-10-37.

STATUTE OF LIMITATIONS.

Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

Corporations.

Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

Director liability for unlawful distributions, §79-4-8.33.

Nonprofit corporations.

Claims against dissolved corporations, §§79-11-343, 79-11-345.

Dissolution of corporation.

Claims against corporation on dissolution, §§79-4-14.06, 79-4-14.07.

Distributions to shareholders.

Director liability, §79-4-8.33.

Limited liability companies.

Claims against dissolved company.
Known claims, §79-29-806.
Unknown claims, §79-29-807.

Limited partnerships.

Liability of partner upon return of contribution, §79-14-608.

Nonprofit corporations.

Claims against dissolved corporations, §§79-11-343, 79-11-345.

Member expelled, suspended or terminated.

Challenging for defective notice, §79-11-189.

Unlawful distributions to shareholders.

Director liability, §79-4-8.33.

STAYS.

Derivative proceedings.

Business corporations act.
Corporation commencing inquiry into allegations, §79-4-7.43.

STAYS —Cont'd

Limited liability companies.

Derivative proceedings, §79-29-1103.

STOCK AND STOCKHOLDERS.

Agricultural associations.

Organization of associations with capital stock, §79-17-23.

Agricultural cooperative marketing associations.

Issuance, voting, limitations on transfer and ownership, §79-19-25.

Aquatic products marketing associations.

Issuance of common stock, §79-21-15.
Fresh and salt water co-operatives, §79-21-63.

Business corporations.

Generally, §§79-4-1.01 to 79-4-17.04.

Certificates, §79-4-6.25.

Control shares.

Voting, acquisition, §79-27-1 to 79-27-11.

Corporations.

Business corporations generally, §§79-4-1.01 to 79-4-17.04.

Distribution to shareholders.

Distribution defined, §79-4-1.40.

Dividends, §79-4-6.23.

Exchange.

Shareholder protection, §§79-25-1 to 79-25-9.

Fiduciary executing proxy, §79-1-5.

Inspection of records by shareholders, §§79-4-16.02 to 79-4-16.04.

Meetings of shareholders.

Business corporation act, §79-4-7.01 to 79-4-7.08.

Merger, consolidation or share exchange.

Shareholder protection, voting requirements, §§79-25-1 to 79-25-9.

Options.

Designation of recipients, §79-4-6.24.

Issuance of rights, options and warrants for purchase of shares, §79-4-6.24.

Professional corporations.

Issuance, §79-10-31.

Preemptive rights.

Acquisition of unissued shares, §79-4-6.30.

Professional corporations.

Shares generally, §§79-10-31 to 79-10-45.

STOCK AND STOCKHOLDERS

—Cont'd

Share certificates, generally,
§79-4-6.25.

Share exchange.

Shareholder protection.

Voting requirements, §§79-25-1 to 79-25-9.

Shareholder meetings, §§79-4-7.01 to 79-4-7.08.

Shareholder protection.

Voting requirements on business combination, §§79-25-1 to 79-25-9.

Subscription agreement.

Business corporation act, §79-4-6.20.

Voting requirements on business combination.

Shareholder protection, §§79-25-1 to 79-25-9.

STOP SALE ORDERS.

Aquaculture.

Issuance of order to stop sale or distribution, §79-22-27.

SUBSCRIPTION FOR SHARES.

After incorporation, §79-4-6.20.

Before incorporation, §79-4-6.20.

SUBSIDIARY CORPORATIONS.

Merger between parent and subsidiary or between subsidiaries, §79-4-11.05.

SUNDAY SCHOOL FACILITIES.

Religious society, ecclesiastical body or congregation's power to own, §79-11-33.

SYNAGOGUES.

Perpetual religious society trust funds.

Establishment, purposes, audit, §§79-11-41 to 79-11-47.

T

TAXATION.

Investment trusts.

Income taxed as business corporation, §79-15-25.

Limited liability companies.

Classification as entity for purposes of income tax, §79-29-112.

TAX EXEMPTIONS.

Agricultural cooperative marketing associations.

Ad valorem taxes, §79-19-53.

TAX EXEMPTIONS —Cont'd

Small business investment companies.

Notes and other evidences of indebtedness, §79-7-5.

TAX EXEMPT PRIVATE FOUNDATIONS.

Conduct of foundations generally, §§79-11-51 to 79-11-61.

TELEPHONE CALLS.

Charitable solicitations by telephone.

Disclosure requirements, §79-11-523.

Restrictions on hours of making phone calls, §79-11-524.

Corporations.

Communicating notice by, §79-4-1.41.

Nonprofit corporations.

Communicating notice by telephone, §79-11-129.

Nonprofit corporations.

Communicating notice by, §79-11-129.

TELEPHONE CHARITABLE SOLICITATIONS.

Disclosure requirements, §79-11-523.

Restrictions on hours of solicitation, §79-11-524.

TELEPHONE SOLICITATIONS.

Charitable solicitations, §§79-11-523, 79-11-524.

TELEVISION.

Nonprofit corporations.

Communicating notice by, §79-11-129.

TEMPLES.

Perpetual religious society trust funds.

Establishment, purposes, audit, §§79-11-41 to 79-11-47.

Religious societies generally, §§79-11-31 to 79-11-47.

TENANTS IN COMMON.

Stockholders holding assets on dissolution of corporation, §79-1-17.

TILAPIA.

Products sold for human consumption.

Labeling, wrapping and container requirements, §79-22-35.

TIME.

Limited partnerships.

Liability upon return of contribution, §79-14-608.

TORTS.

Professional corporations.

Responsibility for negligent or wrongful acts or omissions in rendering services, §79-10-67.

TRADE SECRETS.

Public access.

Exemption for proprietary commercial and financial information, §79-23-1.

TRUSTS AND TRUSTEES.

Foreign business trusts.

Certificate of authority generally, §§79-16-1 to 79-16-35.

Foreign investment trusts,

§§79-15-101 to 79-15-139.

Investment trusts.

Foreign investment trusts, §§79-15-101 to 79-15-139.

General provisions, §§79-15-1 to 79-15-29.

Limited partnerships.

Trust as partner in limited partnership.

Exercise of rights upon dissolution or termination of trust, §79-14-705.

Perpetual religious society trust funds, §79-11-41 to 79-11-47.

Private foundation.

Conduct generally, §§79-11-51 to 79-11-61.

Proxies.

Execution by trustee without order or direction of court, §79-1-5.

Voting trusts.

Business corporation act, §79-4-7.30.
Professional corporations, §79-10-61.

U

ULTRA VIRES.

Business corporations, §79-4-3.04.

UNFAIR TRADE PRACTICES.

Charitable organizations.

Soliciting funds in state, §79-11-519.

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS,

§§79-11-601 to 79-11-617.

UNIFORM PARTNERSHIP ACT

(1997), §§79-13-101 to 79-13-1206.

UNITED FUND.

Regulation of charitable solicitations.

Exemption of charitable organization receiving allocation from, §79-11-505.

UNKNOWN PERSONS.

Report of death to medical examiner, §79-4-8.33.

V

VENUE.

Corporations.

Appeal from denial of reinstatement following administrative dissolution, §79-4-14.23.

Appeal from secretary of state's refusal to file document, §79-4-1.26.

Appraisal rights of shareholders.

Court action to determine fair value of shares, §79-4-13.30.

Claims against dissolved corporation.

Determination of security for payment.

Contingent or unknown claims, §79-4-14.08.

Court-ordered inspection of records by shareholders, §79-4-16.04.

Foreign corporations.

Appeal from denial of reinstatement of certificate of authority, §79-4-15.33.

Inspection of records by directors, §79-4-16.05.

Judicial dissolution, §79-4-14.31.

Nonprofit corporations.

Court ordered dissolution, §§79-11-355, 79-11-357.

Petition to compel secretary of state to file document, §79-11-117.

Dissolution of corporations.

Judicial dissolution, §79-4-14.31.

Foreign corporations.

Appeal from denial of reinstatement of certificate of authority, §79-4-15.33.

Inspection of corporate records by shareholders, court order, §79-4-16.04.

Inspection of records by directors, §79-4-16.05.

Nonprofit corporations.

Court ordered dissolution, §§79-11-355, 79-11-357.

VENUE —Cont'd

Nonprofit corporations —Cont'd

Petition to compel secretary of state to file document, §79-11-117.

Professional corporations.

Compulsory acquisition of shares after death or disqualification of shareholder.

Court action to determine fair value of shares, §79-10-41.

VETERINARIANS.

Corporations.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Professional corporations.

Generally, §§79-10-1 to 79-10-117.

Professional service defined as including services by, §79-10-5.

Professional limited liability companies.

Generally, §§79-29-901 to 79-29-933.

Professional service defined to include services by veterinarians, §79-29-902.

VOICE MAIL.

Corporations.

Communicating notice by, §79-4-1.41.

VOICE MAIL —Cont'd

Nonprofit corporations.

Communicating notice by, §79-11-129.

VOLUNTEER FIRE DEPARTMENTS AND FIRE FIGHTERS.

Regulation of charitable solicitations.

Exemption from provisions, §79-11-505.

VOTING GROUPS.

Business corporation act, §§79-4-7.25, 79-4-7.26.

Defined, §79-4-1.40.

VOTING TRUSTS.

Business corporation act, §79-4-7.30.

Professional corporations, §79-10-61.

Professional limited liability companies.

Voting of membership interest, §79-29-914.

W

WATER SUPPLY.

Rural waterworks corporations.

Special provisions, financial reports, §§79-11-393, 79-11-394.

